COURT OF APPEALS OF MARYLAND

STANDING COMMITTEE ON
RULES OF PRACTICE AND PROCEDURE

INTERIM REPORT

of the

SPECIAL SUB-COMMITTEE ON

PATTERN JURY INSTRUCTIONS

May 10, 1964

Honorable John B. Gray, Jr.
Chairman, Rules Committee
Court of Appeals of Maryland

Dear Judge Gray:

The Subcommittee on Pattern Jury Instructions submits herewith an Interim Report on its work to date.

1. The special subcommittee, charged with the formulation of Pattern Jury Instructions, was appointed pursuant to a decision of the Rules Committee, made January 4, 1963, while that subcommittee was in Africa. It began its work in October 1963, when an office was obtained at 1008 Aurora Federal Building, Baltimore, Maryland. Used furniture was obtained from the Attorney General's Office, and a partial set of the Maryland Reports, from about 100 Md to date, was furnished by the Attorney General. The subcommittee also obtained pattern jury instructions now in use in California, Illinois, Wisconsin, Minnesota, Michigan and the District of Columbia, and the manual on Jury Instructions in Federal Criminal Cases (1964).

2. Personnel

Professor John W. Ester of the Law School of the University of Maryland was employed to act on a part-time basis as Reporter. Mrs. Edith W. Fine, a graduate of the

Harvard Law School and formerly Professor of Law at the University of Puerto Rico, was employed as Assistant Reporter to assist Professor Ester on a part-time basis. Thereafter, the following students at the Maryland Law School were also employed to assist in abstracting cases and classifying the results on a card index system: Mr. Louis Friedman and Mr. Dennis Belman. Professor Ester found that his work at the law school was too heavy for him to continue to work on pattern instructions, and although he did valuable work until the end of 1963, he has been unable to continue since January. Mrs. Fine has done excellent work, but because of her husband's having to leave Baltimore, she will be unable to continue after June 1, 1964.

3. Work Done

The work done by the committee thus far may be summarized under three heads.

a. The first project was to examine each volume of the Maryland Reports, in reverse order of time, starting with 229 Md. and working back to about 130 Md. Every case was examined, and notes were made of the decisions under the following general headings:

i. General Principles of Jury's Functions.

ii. Motor Vehicle Cases.

There is now a file of several hundred cards, classified as to subject matter, which are to be used as the basis of

authority for projected instructions.

b. The subcommittee then drafted an outline or "skeleton" of the various subjects comprising the field, with index or key numbers for paragraphs on each special topic. This outline consists of 10 large divisions or "chapters" and is subdivided into about 200 separate topics. The outline, which is still in tentative form, was shown to the Rules Committee at the meeting of February 21, 1964. It has been modified from time to time and a copy of its present form is attached hereto. The outline indicates the basis on which the case cards have been arranged.

At the meeting on February 21st, it appeared that the Rules Committee felt that the project so outlined was too detailed, and that the subcommittee should confine itself to general principles. It was directed (Minutes p. 2) -

> "to prepare general instructions pertaining to automobile tort cases and preliminary and cautionary instructions of a general nature applicable in all types of litigation at law. Further, that the pattern instructions should be largely of a definitive nature and applicable to negligence cases in the broad sense. Specific instructions on specific factual situations should be avoided except for those which are more or less common and repetitious in negligence cases, and even then the pattern instructions should be stated in broad terms.
>
> "The committee was of the opinion that the detailed classification and cataloguing of the cases by the subcommittee should be continued, and the informative accumulation used as citations following pattern instructions to which related, illustrating the variations or refinements that may be encountered."

c. The subcommittee, believing that in order to under-

stand the situation fully, it was necessary to prepare concrete examples of instructions, then prepared tentative drafts of instructions under about 40 topics. These have been done in a number of instances on two theories, uz, Broad and Detailed, in order to compare their relative values. Examples of such tentative drafts discussed below are given below.

About one/third of the topics can be eliminated, if it appears desirable, by omitting chapters "200 Evidence," "800 Damages," "900 Closing Instructions" and "1100 Rules for Judicial Action."

In preparing draft instructions, the subcommittee has not adopted a final form or style. This of course must be done in the end, and there are a number of different ways of phrasing each proposition as a guide to the judge in instructing the jury. For example, we have not decided whether every question should be phrased singly or in the alternative, i.e., "whether the defendant failed to exercise reasonable care," as opposed to "whether or not the defendant failed to exercise reasonable care."

Nor have we commenced every instruction with the words "I instruct you that .....".

Our effort has been to use simple, informal phrases which express the law accurately in a form more intelligible to laymen than either the opinions of the judges or the headnotes of the reporters.

4. Samples of Broad and Detailed Instructions.

An example of the contrast between a Broad and a Detailed treatment of a single topic is furnished by the topic "579 Boulevard Intersection."

Our draft of a Broad instruction is as follows:

579 BOULEVARD INTERSECTION

The law requires that the driver of a vehicle approaching a stop sign at a boulevard shall both (1) come to a full stop, and (2) yield the right-of-way to a vehicle on an intersecting highway.

Failure to do either by the driver on the unfavored highway constitutes negligence, and if such failure contributed substantially to an accident with a car on the favored highway, you should find the driver who violated the rule negligent.

(225/339)
(226/198)

Our draft of a Detailed instruction on the same topic is as follows:

579 BOULEVARD INTERSECTION

a. Basic Duty -

The law requires that the driver of a vehicle approaching a stop sign at a boulevard shall both (1) come to a full stop, and (2) yield the right-of-way to a vehicle on an intersecting highway.

Failure to do either by the driver on the unfavored highway constitutes negligence, and if such failure contributed substantially to an accident with a car on the favored highway, you should find the driver who violated the rule negligent.

(225/339)
(226/198)

b. Excessive Speed or Position of Favored Vehicle -

An unfavored driver who enters a boulevard without giving the right-of-way to a vehicle on the boulevard is not excused by:

(1) Excessive speed of the vehicle on the boulevard.

(225/526)
(187/174)
(229/159)
(217/84)
(165/32)

(2) The fact that the vehicle on the boulevard was on the wrong side of the road, or in the wrong lane.

(225/526)
(209/526)

c. Stop Sign and Red Light Same -

The effects of a stop sign and a red traffic light are the same with respect to duties under the boulevard law.

(225/112)

d. Slow Sign -

A slow sign on a boulevard does not affect the right-of-way of a vehicle on the boulevard.

(187/174)

e. Extent of Intersection -

The duty of a driver entering a boulevard to yield the right-of-way to vehicles on the boulevard is not confined to the exact confines of the intersection, but extends also until he has entered the proper lane and attained a speed which does not interfere with traffic on the boulevard, or until he has gotten all the way across the boulevard.

(226/198)
(215/43)
(211/568)

f. Divided or Dual Highway -

A divided highway (dual highway) is a single roadway, and a highway crossing it creates a single intersection, entitling any vehicle which enters it on a green light to complete its crossing of both traffic lanes.

(206/407)

g. Necessity of Stop Sign -

To constitute a boulevard, a stop sign must be erected.

(197/130)

h. Turning Into Wrong Lane -

Turning into a wrong lane of a boulevard, and causing a head-on collision constitutes a failure to give the right-of-way.

(226/198)

i. Blocking Intersection -

Blocking of boulevard intersection by a tractor-trailer entering the boulevard is a failure to give the right-of-way and negligent.

(226/198)

j. Bicyclist - Animal Drawn Vehicles -

The duty of a bicyclist, or the driver of an animal drawn vehicle, to obey a boulevard stop sign is the same as that of a motorist.

(229/59)
(211/568)

k. Pedestrian -

A pedestrian is not bound to obey a stop sign.
(228/73)

l. Contributory Negligence of Favored Driver -

The driver of a vehicle on a boulevard may be contributorily negligent -

(1) By failing to avail himself of the last clear chance to avoid the accident.
(186/218)

(2) By failing to see a large object such as a tractor-trailer blocking the roadway, or a passenger car 1/3 block away.
(225/339)
(226/198)

(3) A driver who collides with another because of a defective light at an intersection which showed green for both vehicles is not negligent.
(202/253)

Another example is furnished by the topic "710 Pedestrians." Our draft of a Broad instruction is as follows:

710 PEDESTRIANS

The law gives the right-of-way to pedestrians at street crossings and to motor vehicles between crossings.

Our draft of a Detailed instruction on the same topic is as follows:

710 PEDESTRIANS

a. Basic Duties -

(1) The law gives the right-of-way to a pedestrian at a street crossing (whether marked or not) and to a motor vehicle between crossings.
(167/339)

(2) The right-of-way is not absolute, and even though a pedestrian or a motorist may have the right-of-way at a crossing, each is nevertheless (still) bound to use such care as a reasonable man would use to see and hear what a reasonable man should see and hear, and to protect himself and others against danger.
(167/339)
(226/121)
(223/564)
(217/290)

(3) A pedestrian who starts across a street at an intersection upon a green light, or without a light, has the right-of-way over vehicles until he has crossed the roadway, even after the light has changed to red.
(194/550)
(164/125)

(4) A pedestrian is not bound to obey a stop sign at an intersection. He has the right-of-way over an oncoming vehicle and may cross a boulevard in front of it.
(228/73)

(5) It is not unlawful for a pedestrian to cross a street between crossings, but in doing so he

must use a higher degree of care (the greatest care 222 Md. 106) than is required at a place where he has the right-of-way in order to avoid injury.

(167/339)
(217/291)

b. Definitions -

(1) A pedestrian's crosswalk, where marked, is the area included between the lines marking it. In the absence of marked lines, it is the area formed by projecting the building line and the curb.

(194/550)

(2) The junction of a dead-end street with another street, i.e., a T junction, is a crossing within the meaning of the law.

(187/613)

(3) A crossing between street intersections in a residential area, not marked, but as to which there is evidence of customary use, is not a crosswalk within the meaning of the law.

(214/403)
(199/521)

(4) The rights of a pedestrian at a crossing where several streets come together and where crosswalks are not marked, are the same as those at a "regular" or right-angle intersection.

(151/226)

c. Right to Assume Others Will Do Duty -

A pedestrian who has the right-of-way may assume that where it is reasonably possible, a motorist will yield that right-of-way to him.

(167/339)
(217/253)

d. Contributory Negligence -

(1) A person who leaves a place of safety and walks into a place of danger is guilty of contributory negligence.

(227/537)
(222/106)
(222/297)
(228/454)

(2) A pedestrian who has the right-of-way may nevertheless be guilty of contributory negligence if he leaves a place of safety for one of danger without taking adequate precautions to avoid injury.
(228/454)

(3) It is not (prima facie) necessarily negligent for a pedestrian to cross a street between street crossings. You must judge his conduct in the light of all the circumstances.
(163/335)
(222/126)
(166/33)

(4) A person is deemed to leave a place of safety when he extends only his arm or other part, but not all, of his body into a place of danger.
(222/367)
(198/216)

(5) A person who suddenly walks, or runs, out into a street in front of a moving vehicle is negligent if you find that such conduct was not reasonable.
(203/244)
(199/16)

(6) A pedestrian who steps onto a safety island while crossing a street abandons his right-of-way to vehicles proceeding on the highway.
(222/367)

(7) A pedestrian who sees a vehicle coming on the proper side of the street is not bound to keep on looking to see whether it will change its course to the wrong side of the street.
(163/992)

(8) It is negligence for a person to enter or leave a standing vehicle on the side on which traffic is moving without taking care to see that he can do it with safety.
(225/76)

(9) A pedestrian at a corner is negligent if he does not look to see what traffic is on the street that he is crossing, but he is not bound to observe traffic on the intersecting

street. He is entitled to assume that a car from the intersecting street will give him a signal or yield the right-of-way.

(10) It is not contributory negligence for a pedestrian who has started to cross a street and who sees a car during his crossing driving towards him on the wrong side of the street, to turn back in order to reach a place of safety.

(163/418)

(11) A pedestrian who frequently visits or is present at a crossing, or private premises, must be regarded as familiar with its special conditions and hazards, and assumes the risk of such dangers if he uses them.

(___/___)

e. Motorist's Rights and Duties -

(1) The driver of a motor vehicle must use a high degree of care at an intersection. He must use a higher degree of care than a pedestrian (because of the great harm that a car might do to a pedestrian).

(196/465)

(2) A motorist must use a high degree of care at a crosswalk.

(185/1)

(3) A driver has no duty to anticipate that a pedestrian will cross a highway (street) between crosswalks.

(194/550)

(4) If a motorist injures a pedestrian while driving at excessive speed, you may find him liable if the excessive speed caused or contributed to the accident.

(226/121)

f. Passing Stopped Vehicles -

When a bus is stopped at a crossing, and a passenger who has alighted crosses the street in front of the bus and is struck by a car passing the bus, it is a question for you as to whether the pedestrian or the passing motorist was negligent.

Weizet v. List (161/28)
Brown v. Bendix (187/613)

5. Cautionary or Preliminary Instructions

An example of a Cautionary or Preliminary Instruction is furnished by "125 Impartiality," as follows:

125 IMPARTIALITY

You must consider and decide this case fairly and impartially. All persons are entitled to the same treatment under the law, and such matters as race, religion, political or social views, wealth or poverty, should be completely excluded from your consideration. The same is true as to prejudice or passion, for or against, and sympathy for any party.

Another example is "145 Judge's Demeanor" as follows:

145 JUDGE'S DEMEANOR

If during the trial you have inferred from any acts or words of mine that I favor one side or the other, or believe or disbelieve the testimony of any witness, I instruct you to disregard such thought or inference.

You are the sole judges of the weight of the evidence, including the credibility of the witnesses. The responsibility for deciding the case justly is wholly yours, and is not to be influenced by me.

6. Expenditures

We understand that the sum of $10,000 was appropriated for the Pattern Instruction project for the year ending June 30, 1964. Our expenditures to April 30, 1964 have totalled $2,393.49, and a bill for a typewriter has been incurred in the amount of $440.00. There is thus an anticipated balance as of June 30, 1964 of about $6,800.00.

An itemized list of our expenditures to April 30, 1964 is appended hereto.

7. Summary of Problems

a. Continuation of Project -

The basic question is whether to continue the project or abandon it.

The subcommittee and reporters believe that pattern instructions would have value: (1) in increasing the jury's understanding of the cases and in leading inevitably to fairer decisions; (2) in helping judges and lawyers in accurate statements of the law, and (3) in reducing the number of appeals to the Court of Appeals.

As to the jury's understanding of the cases, it is certainly true that instructions can generally be phrased in plainer language than they are at present. And as an aid to research, in the field of motor vehicles, at least, the absence of a comprehensive and reliable index of the Maryland cases makes this task extremely difficult for judges and counsel.

As to the frequency of appeals, it is abundantly clear in the field of motor vehicles, at least, that the same questions keep coming up on appeal and that in many cases this could be avoided by an approved planned instruction.

It may be said that the question has been raised as to whether pattern instructions are necessary at all in a State such as Maryland, in which oral instructions are proper, unlike several states in which pattern instructions have been adopted.

b. Scope -

A general problem is presented by the Scope of the entire project. At the present time the subcommittee has limited

its substantial work to cases arising out of the problems of motor vehicles. It should be considered whether it is contemplated that the finished work should include other forms of negligence, torts in general, criminal law and other fields. At the present time, it is the opinion of the subcommittee that the work on motor vehicles should be finished, and its results evaluated, before a final decision is made on this larger question.

c. Preliminary and Cautionary Instructions -

No serious problems appear with respect to the preliminary and cautionary instructions. There is no real dispute about them, and the task is simply to put into simple words the elementary propositions which are familiar to all judges as well as lawyers. They can be phrased in different language, as they are in the different State compilations, and the choice is a minor one as to which wording is better.

d. Broad or Detailed Instructions -

With respect to having Broad rather than Detailed instructions, as directed on February 21, 1964, a number of problems appear.

The first is that Broad instructions seem to be so Broad, and their contents so well-known, that they are unnecessary.

The second is that simple Broad instructions do not contain the information required by the judge who is formulating instructions to be given in a specific case before him. What the judge wants to know is not the general rule, for he knows that already.

He wants to know, e.g., the effect of a pedestrian's looking once but not again before crossing a street; or what is the effect of excessive speed of a vehicle on a boulevard; or what is the effect of driving around an obstruction which diminishes visibility. He needs to know how the Court of Appeals has decided these particular points in order to make his instructions useful to the jury.

The third difficulty arises from the Committee's assumption that the cards digesting the various decisions should be used, not for drawing instructions, but for citations, or notes, following Broad instructions. The two objects are in essence the same, and involve substantially the same work, both as to intent and extent. The only substantial difference is in the phraseology of the result, i.e., whether in the form of a direction to the jury, or of a headnote to the judge. In both cases substantially all of the decisions must be examined and taken into account. In both cases the specific situations must be dealt with. In both cases annotations must be made to substantiate the instructions or notes as the case may be. In both cases a team must be organized with a Reporter and appropriate assistants from the Bar, the Bench, or the Law School to carry on the work. In both cases it must be expected that the work will require a period of time comparable to that taken by similar work in other states, i.e., more than one year. It will also require a further appropriation of money.

8. Agreed Tentative Conclusion

At the present stage several subsidiary propositions appear to be agreed upon.

The first is that instructions, when finally formulated, should be voluntary, or optional, and not compulsary, as in Illinois.

Second, there are many ways of saying the same thing; as between the various ways our problem is usually not one of finding out what the law is, but of phrasing it simply in language which the jury can understand.

Third, there should probably be no formal "adoption" of Pattern Instructions by the Court of Appeals. Room should be left for both errors in statement of the law and changes in the law itself.

Fourth, the work should be done with such care that not only lawyers and judges, but the Court of Appeals itself will accept the instructions as prima facie correct, and presumptively accurate in their embodiment of the law.

Fifth, all drafts should be submitted to the usual process of discussion and amendment by the full Rules Committee.

Sixth, special care should be taken to preserve impartiality and to avoid "slanting" in the language used.

This paper is merely an Interim Report which does not pretend to come to final conclusions; it is intended to invite discussion.

Respectfully submitted,

EMORY H. NILES
Subcommittee

September 16, 1964

MEMORANDUM FOR: MEMBERS OF THE SUBCOMMITTEE ON JURY INSTRUCTIONS

FROM: JOHN B. GRAY, JR.

Members of the subcommittee will recall that at its initial meeting, Gray agreed to draft and submit a half-dozen tentative instructions in as many hypothetical cases. These drafts, numbered JBG 1, 3, 4, 5, 6 and 7, follow this memo. They are intended to be as informal and colloquial as possible, with a view of reaching the average juror. It is the writer's belief that this type of instruction is more helpful to most juries than would be a more formal and completely accurate draft. I propose that the proposed Maryland Instructions to Juries be interspersed at suitable intervals with a full instruction of this type, to call the attention of attorneys and judges to the objective of getting instructions that are understandable to juries.

At the initial meeting it was also understood that I would review a block of the cards which have been accumulated by the subcommittee's staff, and draft specific instructions for each topic suggested by the respective cards. I have reviewed the three hundred cards arranged in Chapter 400, including the topics of Primary Negligence, Contributory Negligence, Proximate Cause, and others, and have drafted a brief instruction suggested by each of these cards, as well as comment with respect to other cases which I think well worthy of an annotation or similar treatment in the proposed book. Approximately one-third of the total seemed to me to require either an instruction or an annotation. This does not include those cases in which the Court of Appeals considered and affirmed or reversed the action of the lower court on a motion for directed verdict or a judgment n.o.v. Inasmuch as these cases are now available through the cards, it may be that we should at least tabulate those cases where a motion of this type was considered by the Court of Appeals, for the more convenient access of Court and Counsel. I personally have an open mind on this subject.

The Reporter is being requested to send two copies of this memo and the attached work sheets to each member of the subcommittee. It is suggested that each member review this work and make suggestions and comment on each of the proposals, one set to be retained by the member and the other returned to Judge Niles for study and reworking, where necessary, before the next subcommittee meeting. If this can be done in the next two weeks, we can plan a meeting of the subcommittee early in October.

John B. Gray, Jr.

JBG:ees

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SAMPLE

FIRST DRAFTS

OF

INSTRUCTIONS

May 22, 1964

OUTLINE

MARYLAND PATTERN INSTRUCTIONS

May 10, 1964

100 Preliminary and General

104 Interpretation of Instructions as a Whole
105 Issue in Present Case
107 Liability Admitted
110 Parties
115 Triers of Fact Not Law - On Evidence
116 Witnesses - Weight of Evidence - Credibility
118 Falsus in Uno
119 Party Competent
119A Number of Witnesses
119B Interviews with Attorney
119C Fees of
119D Stricken Testimony
119E Settlement with Witnesses
120 Cautions
125 Wealth, Poverty, Race or Religion
135 Insurance
140 Interpretations
145 Judge's Demeanor
147 Objections and Rulings
150 Definitions
155 Attorneys - Arguments of
JBG Landlord & Tenant

200 Evidence and Proof

Flight
Weight of, See 117A
Depositions
Admissions
Uncontradicted
Positive Against Negative
Verbal Statements
Produced by Adversary, See 116
Party as Witness, See 119
Fees, See 119C
Measurements
Physical Facts Uncontroverted
Failure to Testify
Juror's Knowledge or Experience, See 115

208 Skidmarks
210 Experts

Hypothetical Questions

215 Hearsay and Other Exclusions
217 Dead Man Statute
220 Business and Hospital Records
225 Other Accidents
230 Custom and Usage
232 Careful Habits
235 Precautions Before Accident
237 Precautions After Accident
240 Presumptions
242 Precautions for Own Safety
245 Mere Happening of Accident
250 Res Ipsa Loquitur
255 Circumstantial Evidence
260 Identification
265 Burden of Proof
266 Even Balance
270 Impeachment
275 Against One Party Only

300 Special Relationships

305 Agency
306 Driver on Personal Business - Duration
310 Partnership
312 Husband and Wife
313 Parent and Child
315 Joint Venturers and Partners
320 Independent Contractor
322 Driving Instructor
325 Corporations
330 Owner of Vehicle
332 Estate of Decedent
335 Entrusting to Incompetent Driver
340 Driver
345 Manufacturer's Liability
350 Joint and Several Liability

400 General Principles of Liability

402 General Duty to Use Care
403 Right to Assume Due Care by Others
404 Duty to See and Hear - Lookout
406 Duty to Avoid Injury to Others
408 Negligence
410 Contributory Negligence
411 Comparative Negligence
412 Leaving Place of Safety
413 Children
414 Willful and Wanton Misconduct
415 Assumption of Risk
420 Last Clear Chance

425 Unavoidable Accident
430 Proximate Cause
435 Concurrent Cause
440 Intervening Cause
445 Violation of Statute
450 What is Not Duty of Motorist
455 Denial of Accident - Identification

500 Specific Duties - Rules of the Road

502 Management and Control
503 Driver's Manual
504 Limited Skill of Driver
505 Right-of-Way - Definition
508 Maintenance of Vehicle in Safe Condition
510 Safety Devices
512 Seat Belts
515 Lights
517 Flares
520 Brakes
525 Chains
530 Snow Tires
535 Adaptation to Conditions
537 Low Gear on Hills
540 Weather
545 Condition of Road
550 Emergencies
552 Animals
554 Observation of Rules of the Road
558 Speed
JBG- 559 Lanes of Traffic
560 One Way Streets
562 Passing and Overtaking
563 Rear End Collision
564 Turning
564A Left Turns
565 Signs - Painted
566 Driver's Signals
567 Yield Signal
567A Must Turn Signal
568 Parking
569 Starting from Stationary Position
570 Backing
572 Stopping and Slowing
573 Impeding Traffic
JBG - 575 Intersections in General
577 Ordinary
JBG - 578 Dual Highways
579 Boulevard
JBG - 580 Traffic Signals - Automatic
581 Alleys

583 Private Entrances
584 Railroad Crossings
585 Obstructions to View
587 Obstructions on Highway
589 Obedience to Traffic Officers
592 Garages and Parking Lots
593 Private Property, Driving on
594 Duties After Accident

600 Nature of Vehicle - Special Rules

605 Passenger Cars
610 Passenger Bus
615 School Bus
620 Taxicab
625 Trucks
630 Tractor- trailer
635 Towed Vehicles
640 Emergency Vehicles
645 Animal Drawn Vehicles
650 Miscellaneous Vehicles
655 Street Cars
660 Railroads

700 Special Parties

705 Common Carriers
710 Pedestrians
712 Handicapped Persons
713 Blind Persons
715 Bicyclist
720 Passenger
725 Guest
730 Person Entering or Leaving Vehicle
735 Children
736 In Road
737 Near Road
738 Residential Areas
740 Intoxicated Persons
745 Workers on Highway
750 Trespassers
755 Invitees
760 Licensees
765 Funeral Processions
767 Military Convoys
770 Parades
775 Hitchhikers
777 Riders
780 Walkers on Highway
785 Volunteers - Good Samaritan
790 Manufacturers and Supplymen

800 Damages

803 General - No Division
805 Disregard ad damnum
806 Past and Future
808 Personal Injury - Pain and Suffering
809 Fright
811 Medical Expenses
814 Loss of Earnings
815 Salary Received During Disability
816 Insurance Received
817 Workmen's Compensation Received
820 Property Damage
822 Loss of Use - Automobile
824 Incidental Expenses
826 Substitute Transportation
830 Special Relationships - Husband and Wife
832 Care of Home
834 Parent and Child
836 Support of Relative
840 Punitive
850 Death - Loss of Support
855 Mortality Tables
857 Funeral Expenses
858 Shortening of Life
860 Disability
862 Present Case Value
864 Partial
866 Total
868 Disfigurement
870 Social Activities
880 Aggravation - Previous Injury or Disability
884 Mitigation - Duty to
886 Burden of Proof - Each Item
888 Not Taxable as Income

900 Closing Instructions

905 Verdict
910 Form
915 General
920 Special
925 Sealed
930 Content - Fixed Sum
932 No Quotient or Chance
935 Procedure in Jury Room
940 Discussion and Stubborness; Give and Take
945 Decide on Evidence, Net Speculation
947 Use Ordinary Experience
950 Even Doubt - Not To Tie Vote
955 Exclude Sympathy and Prejudice

1100 Rules for Judicial Action

1105 Directed Verdict for Defendant
1107 Directed Verdict for Plaintiff
1110 Judgment NOV
1115 Voir Dire
1120 Evidence
1125 Improper Arguments by Attorney
1130 Form of Instruction to Jury
1135 Attorneys

MARYLAND PATTERN INSTRUCTIONS

EXPENDITURES

October 1, 1963 - April 30, 1964

Jury Instruction Volumes	$	45.25
Bar Library		22.00
Moving		112.84
Additional equipment (filing cabinet, waste baskets, etc.)		59.75
Supplies		32.80
Garage Rent		192.50
Office Rent, 1008 Aurora Federal Building		700.00
Mrs. Edith Fine, Asst. Reporter		681.00
Professor John W. Ester, Reporter		200.00
Mr. Louis Friedman, Law Student		156.00
Mr. Dennis Belman, Law Student		72.00
Telephone		119.35
	$	2393.49
Typewriter (not yet paid)		440.00
	$	2833.49

104 INSTRUCTIONS AS A WHOLE

The instructions which I give you are to be considered as a whole, and if I state rules or directions in varying ways, no emphasis upon any particular phraseology is intended by me to be inferred by you. Nor has the order in which I state the instructions any significance as to their ~~relative~~ importance.

You are to regard each instruction in the light of all the others.

105 ISSUES IN THE CASE

Outline of Facts before Opening Statements

In the present case, the plaintiff, Mr. P., claims that he was injured and damaged because the defendant, Mrs. D., was negligent ~~in~~ under the following ~~respects:~~ circumstances:

Mr. P. was driving north on Oak Street approaching 25th Street at which he says there was an automatic traffic light showing green for traffic on Oak Street. He claims that Mrs. D., who was driving west on 25th Street, ran through the red light which was showing for her, and collided with Mr. P., whose arm was broken and whose car was damaged.

Mrs. D. denies that the red light was showing for her; she claims that she had the green light, and that the accident was Mr. P's fault for running through a red light.

Mrs. D. claims to have suffered an injury to her knee, as well as damage to her car, and has brought a counter claim against Mr. P.

There are thus two issues in the case, namely:

1. Did Mrs. D. or Mr. P. run through the red light?
2. How much damage did the one not at fault suffer?

Both of these issues are questions of fact, and it will be your duty, after you have heard the evidence, the arguments of the counsel, and my instructions to you, to decide them.

Mr. P will sometimes ~~often~~ be called ~~referred to as~~ the Plaintiff, and Mrs D will sometimes be called the Defendant

117 CREDIBILITY

You are the judges of the credibility of the witnesses; by that I mean that you are the judges of whether to believe them or not. You are not bound to believe any witness, whether his testimony is uncontradicted or not. You may believe all, part, or none of the testimony of any witness. Your function is to determine from all the evidence what are the true facts in the case and to apply the law as I have given, or will give, you in these instructions.

n

125 IMPARTIALITY

You must consider and decide this case fairly and impartially. All persons are entitled to the same treatment under the law, and such matters as race, religion, political or social views, wealth or poverty, should be completely excluded from your consideration. The same is true as to prejudice or passion, for or against, and sympathy for any party.

135 INSURANCE

I instruct you that no insurance company is a party to this case. During the trial some ~~If any~~ reference to insurance ~~has been~~ was made ~~in the testimony, or if you think or suspect, that any insurance company is involved in any way~~, but the court struck out that testimony, and I direct you to disregard that matter.

Your function is, ~~if liability exists, to assess damages~~ to decide the case fairly fairly and justly, and without any reference to whether ~~the~~ any party ~~concerned~~ is insured or not.

145 JUDGE'S DEMEANOR

If during the trial you have inferred from any acts or words of mine that I favor one side or the other, or believe or disbelieve the testimony of any witness, I instruct you to disregard such thought or inference.

You are the sole judges of the weight of the evidence, including the credibility of the witnesses. The responsibility for deciding the case justly is wholly yours, and is not to be influenced by me.

147 RULINGS

During the course of the trial, it has been my duty to rule on a number of questions of law, such as objections to the admissibility of evidence, the form of questions, and other legal points.

These rulings have no importance for you in the decision of the case, and no bearing on its merits. You should draw no conclusions from them either as to the merits of the case, or as to my views regarding any witness or the case itself. They are made on my responsibility and if I have made a mistake, it can be corrected on appeal.

It is the duty of a lawyer to make objections which he believes are justified by the law, and the fact that his objections have been either overruled or sustained is of no importance and should be disregarded by you.

150 a DEFINITIONS - CARE - PRUDENCE

The law in dealing with human actions usually requires that people act with ordinary prudence and care, both for themselves and for others. It does not require them to be over cautious or over bold, but to act as ordinary reasonable men and women.

When, therefore, I say "care" or "prudence", I mean ordinary care or ordinary prudence and I will not repeat the word "ordinary" every time. Sometimes the law requires a higher degree of care than ordinary care, and in such cases I will explain that to you.

150 b DEFINITIONS REASONABLE

The law usually requires that people act as ordinarily reasonable men and women. It does not require them to be philosophers and does not permit them to act unreasonably. The standard of reasonableness is that of the ordinary sensible and careful person, and it is for you to say in this case, whether the persons involved did or did not act reasonably.

Facts vary so much that no precise line can be drawn in advance, and it is your particular special function to determine whether the parties in this case acted reasonably.

I will not repeat the words "ordinarily" or "ordinary" every time, and unless I instruct you otherwise, you may take it that "reasonable" means "ordinarily reasonable".

JBG #4 - THIS IS A SUIT BY THE PLAINTIFFS TO RECOVER FOR DAMAGES INCIDENT TO PERSONAL INJURY TO THE PLAINTIFF SUSIE, WHEN SHE FELL IN THE SUPERMARKET AND SUSTAINED AN INJURY TO HER LOWER BACK.

Mr. Foreman and members of the jury:

The Court will discuss this case briefly with you, because there are some principles of law which you should be informed about. You will understand that the Court's instructions concerning these principles of law (must (are binding on) will) be followed by you. However, so far as the facts in the case are concerned, it is your responsibility to determine what the facts are and to bring in your verdict accordingly. You have the responsibility of determining the credibility of the witnesses whom you have heard, and of determining the weight of the evidence. Any reference the Court will make to the facts will be only for the purpose of bringing clearly into focus the factual problems which you must resolve.

There is no dispute about the fact that Susie Plaintiff, on the day in question, entered the defendant's (of Safeway Co., Inc.) store in order to do her household shopping, and that as she turned into one of the aisles where she proposed to inspect and perhaps buy some of the defendant's goods, she slipped on some foreign substance then on the floor and fell. She claims that her back was injured in this mishap and you have heard her injuries described by her and by the doctor who testified. You will, of course, be concerned with the circumstances under which this fall occurred, whether it is attributable to the lack of care on the part of the defendant in the maintenance of his store, and of course you are also concerned with the extent to which the plaintiff's injuries to her back resulted from this fall.

You will understand that the Plaintiffs (i.e. Mrs. ~~[illegible]~~ and her husband Joe Plaintiff) have the burden of proof in this case; that is to say, they are required to show by a fair pre-

JBG #4 (Contd.)

ponderance of the testimony that the happening of this occurrence was the result of a lack of care on the part of the defendant store, and that the injuries which are claimed by the plaintiff resulted from that fall.

Defendant Mt. Grocery Co.

The Court instructs you, as a matter of law, that the defendant supermarket was charged with the duty to maintain a reasonably safe place for its customers to use in patronizing its store. This would include an obligation to remove any foreign substance which it knew, or by the exercise of reasonable care ought to have known, was on the floor and likely to cause a customer to slip and to fall. There is no evidence that any employee of the store spilled the foreign substance on the floor; however, there is evidence that some time prior to the occurrence in which the plaintiff here was involved, another customer was seen to knock over a bottle which had been placed on a display shelf adjacent to the area where the fall occurred. Moreover, after the accident complained of, there was found a broken bottle of hair shampoo lying on the floor at the edge of the counter, adjacent to the area where the plaintiff fell, and its contents were spilled on the floor in the area where the plaintiff claims that she slipped and fell. There is no evidence that the customer who caused the bottle to fall--or anyone else, for that matter--brought the mishap to the attention of any person on duty at the store. However, it was the duty of the defendant to use ~~due~~ reasonable care to discover foreign material on the floor and to remove it.

The crucial question in this case is whether there was such time between the spilling of the shampoo material and the plaintiff's fall as to charge the defendant, or its employees, with the knowledge of

the condition and the duty to correct it. In this connection, I point out to you the testimony of the witness Smith, who was a porter for the defendant store, and at the time of the fall was engaged in sweeping the floor of the supermarket. His testimony was to the effect that it took him about fifteen minutes to sweep the store from the point where the plaintiff fell to the point where he actually was engaged in his duties when he heard her fall and went to her assistance. His testimony was that at the time he swept that area, there was no sign of the broken bottle or the fluid spilled on the floor. You will consider this testimony in order to determine whether there was sufficient time between the breaking of the bottle by a customer and the happening of the accident to have charged the defendant Grocery Co., or its employees, with knowledge of the unsafe condition and to charge them with the lack of proper care in correcting the situation before the Mrs. Plaintiff was hurt.

Regardless of the question of primary negligence on the part of the defendant Grocery Co. or its employees, the Court informs you that the Mrs. Plaintiff is charged with the duty of exercising, for her own protection, the degree of care and prudence of an ordinarily prudent person under like circumstances, and that if she failed to exercise that degree of care, and such failure contributed to her fall and injury, then this defeats her right of recovery, regardless of any fault on the part of the defendant or its employees. The burden of proving this contributory negligence is on the defendant Grocery Co.

If your verdict in this case Damages is for the plaintiff, you are directed that the measure of damages, so far as Susie Plaintiff is concerned, is the allowance to her of such sum as would fairly compensate her for the pain and suffering which she has sustained as a result of

the injuries resulting from the fall. You will recall that the doctor's testimony was that she gave evidence of muscular spasm in the low back which was attributable, in the doctor's opinion, to the injury which she received on the fall in question. You will recall that the testimony was that she was placed in traction at Physicians' Hospital, which was maintained for a period of one week, and thereafter was convalescing for several weeks before she was able to return to her normal pursuits.

The testimony was that she was employed at the time of the accident, and that she lost three weeks before she was able to return to work. You also are entitled to allow her for her loss of earnings during this period of time at the regular rate of her pay.

You may also take into consideration any pain and suffering incident to her convalescence up to the date of trial, and to allow her as part of the damages to be awarded her, such sum as will reasonably compensate her therefor. If you find that she is reasonably certain to experience pain and suffering in the future, you may also allow such sum as will be reasonable compensation for such pain and suffering. We instruct you that there is no evidence of permanent injuries in this case and, accordingly, that aspect of her claim is not allowable.

With regard to the claim of Joe Plaintiff, you are instructed that his claim is limited to two aspects. One has to do with reimbursing him for the out-of-pocket expenses which it is agreed that he expended for hospital bills, doctors' bills, in the aggregate amount of $462.20. However, in addition to that you may allow him such sum as will reasonably compensate him for the loss of his wife's usual family duties and

JBG #4 (Contd.)

services during the time of her convalescence, and also allow the plaintiff any additional expense to which he may have been put by reason of his wife's illness, in the way of hired help or otherwise.

208 SKIDMARKS

You may consider the fact that the vehicle of _____ made skidmarks, as one of the circumstances of the accident in determining whether or not the _____ was speeding or failed to have his car under control. But, I caution you that the existence of skidmarks alone is not sufficient for you to conclude that the _____ was driving at excessive speed or was otherwise negligent.

EHN

Police Officer as expert.

Skidmarks alone do not constitute evidence of excessive speed.

217 Md 253
217 Md 433, 438

Skidding alone is not evidence of negligence in the absence of negligent conduct which would cause (produce) the skidding.

192 Md 419

Skidmarks 45 feet long made by a driver who said he was going at 15 - 20 mph constituted sufficient evidence to submit case to the jury as to whether car was under control.

186 Md 379

Where skidmarks are measured 1-1/2 hours after accident and other traffic has passed over the highway, the rejection of such evidence was not ground for reversal, although it could have been omitted.

170 Md 90

A state police officer may testify as an expert that tires will leave marks if pushed sideways.

188 Md 365

A state police officer may testify that the length of skidmarks indicates that the speed of the vehicle was "slow".

207 Md 204

Skidmarks indicate speeding (?). 196 Md 209

An inference of negligence may be drawn from skidmarks 55 feet long.

216 Md 165

It is not generally safe to rely on marks made in the road to determine the movements of vehicles just before a collision.

195 Md 535

Skidmarks 50 - 60 feet long did not alone support an inference of excessive speed.

217 Md 433, 439

Skidmarks alone do not constitute evidence of an unavoidable accident.

191 Md 712

245 MERE HAPPENING OF ACCIDENT

The mere happening of an accident raises no presumption of negligence. Where one party charges another with negligence against another, it is his duty to prove such negligence by the greater weight of the (reasonable) evidence. Speculation or guess work is not sufficient.

If after considering the evidence you are unable to decide (your minds are in even balance as to) whether or not the person charged with negligence was negligent or not, then you must conclude that the negligence has not been proven.

190 Md 528
213 Md 248
198 Md 216
212 Md 107
203 Md 244

300 VICARIOUS LIABILITY - MOTOR VEHICLES

Ordinarily a person is responsible only for his own negligent behavior. In certain instances, however, a person may be responsible for the negligent driving of another person.

I. Liability of Owner.

A. There is a presumption that the owner of a motor vehicle is responsible for the negligence of any person operating that motor vehicle. 213 Md 248

B. In this case, there was evidence offered for the purpose of showing that, at the time of the accident, the circumstances did not justify the owner being held responsible for the driver's negligence.

C. The owner would not be responsible only if you find that, at the time of the accident:

1. The driver was driving for his own purposes and not for the business or benefit of the

owner, and,

2. The owner did not have the right to control the manner in which the vehicle was being operated.

153 Md 333
221 Md 292
160 Md 18
139 Md 380
139 Md 557

D. An owner who entrusts his car to one who he knows or should know is an incompetent or reckless driver.

168 Md 120
166 Md 151

II. Master-Servant -

Any person, whether or not the owner of the vehicle, is responsible for the negligence of any person who is his agent and acting within the scope of his employment. Whether or not the driver was, at the time of the accident, the agent of _____ depends upon -

A. Whether the driver was in _____'s general employ or was hired to perform any task for _____.

Vicarious Liability -
Motor Vehicles Continued

B. Whether at the time of the accident he was engaged in performing the task.

C. Whether the relationship was such that _____ had the right to control the manner in which the driver was operating the vehicle. 196 Md 584

III. Joint Venturers and Partners -

Any person, whether or not the owner of the vehicle, is responsible for the negligent driving of one with whom he is engaged in a partnership or any joint business venture. You may find that there was such a relationship between _____ and _____ if you believe that:

A. They were carrying out a joint objective beneficial to them.

B. They understood that each had an equal right to control the operation of the vehicle.

The mere association of a driver and passenger (or a mere family relationship) in the use of a vehicle is not sufficient to constitute them joint venturers.

IV. A driving instructor present in a vehicle is bound to use care to see that his student does not cause injury to others.

152 Md 29

402(a) DUTY TO USE DUE CARE

A person is negligent if he fails to act as an ordinary reasonable man would act under similar circumstances.

It is for you to decide whether the conduct of _____ measured up to this standard.

402(b) DUTY TO USE ORDINARY CARE

It is the duty of every person to use ordinary care for -

his own safety,

the safety of his property,

the safety of others, and

of their property.

This duty includes, but is not limited to -

1. Observance of Rules of the Road.

2. Maintenance of car and its appliances in safe working condition.

3. Seeing and hearing conditions on the road, such as surface, obstructions, traffic, weather, emergency vehicles, signs and signals.

4. Keeping his car under control.

5. Specifically in this case,

(Having his brakes in safe working order)

(giving a signal when about to turn or stop)

(obeying an order from a traffic officer)

(seeing a traffic sign or signal and obeying it)

(not leaving a place of safety for one of danger)

JBG 402 (GENERAL DUTY)

The Court instructs you, ladies and gentlemen, that all persons who use the public streets and highways, whether as drivers of automobiles or other vehicles, or as pedestrians, are charged with the duty of exercising due care for the protection of themselves and others By this we mean that each of them is required to use that degree of care and prudence which would be used by an ordinarily prudent person under like circumstances. This is in addition to and independent of the duty of such persons to observe any relevant rule of the road, that is, any statutory provision with respect to right of way, speed, or manner of operating a vehicle.

In the pending case there is testimony tending to show that the plaintiff alighted from a bus at a street intersection and, after the bus had passed on, started across the street in the crosswalk marked for pedestrians; and after looking north and south and not observing the defendant's car, which may have been screened by the bus. In this situation the Court instructs you that the plaintiff had the right of way, and that the defendant was obligated to have his car under such control, and at such a rate of speed as, so far as reasonably possible, to avoid the danger of collision with pedestrians lawfully on a crosswalk.

The defendant contends that the plaintiff was guilty of contributory negligence, because she either failed to see the defendant's automobile or because she attempted to cross the street while the bus screened her view of the traffic approaching from the opposite direction. The Court instructs you that if you believe that the plaintiff failed to exercise the care which an ordinarily prudent person under like

circumstances would have exercised, and that this failure on her part contributed to the happening of the accident, then her claim in this case should be denied by you and your verdict should be rendered for the defendant.

However, negligence on her part is not to be presumed. In fact, she had a right to assume that the driver of any oncoming vehicle would exercise due care in the operation of his auto and would respect her right of way to cross the street in the crosswalk without interference. The burden of proving contributory negligence on the part of the plaintiff is on the defendant, who asserted it.

Deford vs. Lohmeyer, 147 Md 472 (1925)
Judgment for the plaintiff, affirmed on appeal.

Emergency - Dog Case

JBG 402 (GENERAL DUTY)

Baltimore Transit Company v. Prinz, 215 Md 398

This is a rear-end collision in which the operator of the leading car claims he was confronted with an emergency when an animal suddenly ran into the roadway. When he attempted to stop or turn his car, he was hit from the rear by the defendant. Instruction:

You are instructed that this is a rear-end collision. The law requires that the leading car, when about to stop or to turn, must give an appropriate signal to cars approaching from the rear, and the latter are required to keep a lookout and to maintain a safe distance from the car ahead, so that with the exercise of ordinary care and prudence the following car can be so operated as to avoid collision with a car ahead.

However, we are instructing you that where a driver is confronted with an emergency, he must act in such a way as to minimize the risk of the emergency to himself and to others. There is testimony tending to show that an animal suddenly ran into the road in front of the plaintiff's car.

You will consider the testimony with respect to this situation and determine whether this situation created an emergency which justified the plaintiff in slowing, stopping, or turning his car in an effort to avoid striking the animal, and which made it necessary for the plaintiff to thus act without a signal to traffic approaching from the rear. If you find that the plaintiff operated his car with care and prudence in view of all of the facts and circumstances, then his claim in this case would not be defeated by any contributory negligence on his part.

Beam over Alley.
Public Nuisance.

JBG

402 (GENERAL DUTY TO USE CARE)

Benson v. Loehler, 220 Md 55

Plaintiff, riding in a garbage truck using an alley, was hit on the head by a steel beam hanging from a private bridge extending over the alley between two buildings on each side thereof, owned by the defendant. A directed verdict for the defendant was reversed. Suggested instruction:

It is conceded in this case that the defendant owned the two buildings, one on each side of the alley, described in the evidence, and that for many years there had existed a bridge between these buildings, extending over the alley. The Court instructs you that the evidence shows that this alley is a public thoroughfare, and that the bridge is a structure maintained over the same by the defendant.

While there is testimony that the bridge in question has not been used for many years, you are instructed that it was the duty of the owner thereof to either remove it or to see that it was maintained in such condition as to be safe for the reasonable use of the alley by the public. The issue in this case is whether the defendant did use reasonable care in maintaining the bridge, so as to avoid injury to persons lawfully using the alley.

?

Height
Principle of
reas. care.

Tractor - Trailer
Degree of Care.

JBG

402 (DUTY TO USE DUE CARE)

In a collision between a tractor-trailer and a car, plaintiff requested an instruction in regard to the weight and maneuverability of the tractor-trailer, and pointed to great potential danger of the larger vehicle. This prayer was denied by the trial court and affirmed on appeal, the Court holding that no higher degree of care was required, though the size, etc., are circumstances to be considered in determining whether or not there was due care. The amount of care required is in proportion to the apparent risk. As the danger becomes greater, the actor is required to exercise caution commensurate with it. However, the case holds that mentioning these ~~facts~~ factors in an instruction is not improper, but that the degree required is no higher than the ordinary care required of all drivers under similar circumstances. The type of charge to be given--whether detailed or general-- was within the discretion of the trial judge, and was not required to include those requested in it. Instruction:

Gentlemen of the jury:

Your attention is invited to the fact that the collision in this case occurred between a large tractor-trailer and a conventional pleasure-type automobile. The former is a large, heavy vehicle not easy to maneuver, as compared with the ordinary pleasure car. Each of the drivers was charged with the duty to operate his vehicle in the same skillful manner that an ordinarily prudent person would use under like circumstances, each having regard to the size, weight and maneuverability of his vehicle.

402 (Duty To Use Due Care) Contd.

Lemons v. Chicken Processors, 223 Md 362

Christ v. Wernke, 219 Md 627, 640

Peoples' Stores v. Windham, 178 Md 172, 185

Warnke v. Essex, 217 Md 183

Lehmann v. Johnson, 218 Md 343, 346

Finlayson v. Gruss, 222 Md 192, 195

Prosser, Torts (2nd Ed.), §33, P.147

Ager v. Baltimore Transit, 213 Md 414, 425

JBG

402 (GENERAL DUTY) Wrong Side of Road

410 (CONTRIBUTORY NEGLIGENCE)

In this case the plaintiff and defendant were operating trucks going in opposite directions on a two-lane road. They collided at night, when each driver had a view of the oncoming truck for a substantial distance. Plaintiff sued the defendant, and the testimony tended to show that the defendant had swerved to his left, crossing the center line, and collided with the plaintiff's truck on the latter's side of the road. In the plaintiff's suit for damages, the issue of his contributory negligence should be submitted to the jury.

Gentlemen of the jury:

In this case the drivers of both trucks owed to each other the reciprocal duty to exercise due care in the operation of their respective trucks. This imposed upon each of them the obligation and the duty to exercise the degree of care and of control which an ordinarily prudent person would have exercised under like circumstances.

If you believe, from the evidence in this case, that the defendant, while still a substantial distance from the plaintiff, swerved his truck to his left and crossed over the center line into the southbound lane, and if the plaintiff, in the exercise of ordinary care and prudence, saw or should have seen this act by the defendant, it was the plaintiff's duty, if there was sufficient time for him to do so and sufficient space to permit such a maneuver, to turn his truck to the right and thus escape a collision with the defendant's truck. If you find that he failed to use reasonable care to this end, and that this failure contributed to the collision of the two trucks, then you are instructed

that the plaintiff's right to recover in this case is defeated by his contributory negligence, and your verdict should be for the defendant.

Oberfield v. Filers, 171 Md 332 (1957)

Judgment for the plaintiff, reversed.

JBG

Degree of Care
Elec. Wires

402 (GENERAL DUTY TO USE CARE)

This is not an automobile case, but the prayer is taken from the action of the Court in Eastern Shore v. Corbett, 227 Md 411. Here a house was under construction and the defendant, a public service utility had wired the house for electrical service. While the plaintiff was engaged in painting the building, the defendant company, without notice, energized the wires, and in some fashion the defendant received an electrical shock which subjected him to substantial injuries. It was a verdict for the plaintiff, which was reversed by the Court of Appeals on the ground that the instructions charged the defendant with "the highest degree of care." The Court held that the defendant was charged with the duty of ordinary care. A skeleton instruction follows:

The plaintiff's claim in this case is predicated upon the contention that the defendant was guilty of negligence, that is, the failure to use proper care in connecting his energized lines to the electrical intake of the building on which the plaintiff was working. The Court instructs you that under these circumstances, the defendant, in energizing the lines and connecting its power lines with the intake provided for the building, was required to use ordinary care, that is, the same degree of care and caution which an ordinarily prudent person would have used under like circumstances. There is no evidence in the case that the voltage connected with the building was so high as to be an inherent peril to life or limb.

JBG

402

Degree of Care
Private Premises

State v. Carroll, etc., 183 Md 293 (1944)

Deceased was struck and killed while directing a weighing scale and standing on private property, by a coal truck which approached him from the rear. After the cab had passed him, the driver turned the truck in such a way that he struck the pedestrian and killed him. On the trial below, the case was taken from the jury but reversed on appeal and a new trial granted.

It was the duty of the truck driver, on entering private premises, to use the same degree of care and diligence in the operation of his truck as would an ordinarily prudent person under like circumstances, so as to avoid injury to any person lawfully on the premises and plainly visible to the driver.

JBG

Rt of Way

402 (DUTY TO USE DUE CARE)

Graff v. Transfer & Storage Co., 192 Md 632

The defendant's bus, which had been travelling East, and the plaintiff's truck, which had been travelling South, collided at an intersection of two roads, neither of which was controlled by a stop sign or traffic signal. The testimony indicated that the plaintiff's truck entered the intersection when he saw that the bus was 250 feet away. The defendant's bus struck the truck. The defendant appealed, contending that it should be ruled as a matter of law that he was not negligent, because the bus was the favored vehicle.

You are instructed that the rules of the road in Maryland give the driver approaching from the right the right of way, and opposing traffic is bound to yield the right of way and, if necessary, to stop. This is not absolute. The favored driver approaching an intersection is still under the duty to operate his vehicle in a manner free of negligence, and if the favored driver does not exercise due care, he is not afforded complete protection by the statute. On the other hand, his right of recovery would be barred by contributory negligence.

403(a) ASSUMPTION THAT OTHERS WILL ACT PROPERLY

(Cal 138 See 187 Md 174)

A person who is exercising ordinary care has the right to assume that other persons will also perform their duties (duty) under the law, and he has a further right to rely and act upon that assumption. Thus, it is not negligent to fail to anticipate injury which can result only from a violation of law or duty by another. However, a person does not have the right to assume and act as above stated, when it is reasonably apparent to him that another person it not going to perform his duty. 138 Md 2

Every person who is himself exercising ordinary care has a right to assume that every other person will perform his duty and obey the law, and in the absence of reasonable cause for thinking otherwise, it is not negligence for such a person to assume that he is not exposed to danger which can come to him only from the violation of law or duty by another person.

(Note - this version is preferred by California Committee).

403(b) ASSUMPTION UNFAVORED DRIVER WILL DO HIS DUTY

The driver of a bus, taxicab, or other common carrier may rely on the assumption that a vehicle entering a boulevard will yield the right-of-way to traffic on the boulevard.

197 Md 274
212 Md 436
209 Md 354

Excessive speed by the bus or taxicab is not a contributory factor; the negligence of the unfavored driver is the sole cause of the accident.

209 Md 354

404 LOOKED BUT DID NOT SEE

General human experience justifies the inference that when one looks in the direction of an object clearly visible, he sees it, and that when he listens, he hears that which is clearly audible.

When a person testifies that he did look but did not see that which was in plain sight, (or that he listened, but did not hear that which he could have heard in the exercise of ordinary care), it follows that either some part of such testimony is untrue or that the person was negligently inattentive.

JBG

404 (DUTY TO SEE AND HEAR) Looked but Did not See.

Bush v. Mohrlein, 191 Md 418 (1948)

Baltimore Transit v. Young, 189 Md 423

Where a witness testified that he looked and listened, but did not see a certain thing, which, if he had looked and listened, he must necessarily have seen and heard, his testimony is not worthy of consideration.

JBG

404 (DUTY TO SEE AND HEAR)

Smith v. Greyhound, 228 Md 15

Henderson v. Brown, 214 Md 463

Plaintiff had alighted from a bus and proceeded to cross the highway when his view was partially obstructed by the bus. He was held to be guilty of contributory negligence as a matter of law.

The plaintiff was either aware of, or should have been aware of, the fact that his view was obscured, and therefore should have watched for vehicles travelling on the highway. The appellant is in the situation of one who either did not look when he should have, or did not see when he did look, and this, therefore, requires a finding that he was contributorily negligent as a matter of law.

JBG

404 (DUTY TO SEE AND HEAR)

Palmer Ford, Inc. v. Rom, 216 Md 165

Plaintiff was about to make a left turn in the middle of the block into a private driveway. He testified that he made a proper and timely turn signal, but defendant ran into the rear of plaintiff's car. Plaintiff had laid down 55-foot skid marks.

If you find that the plaintiff gave appropriate signals for a distance of more than 100 feet from the turning point, the Court instructs you that the failure of the driver of the overtaking vehicle to see and regard such signals would be clear evidence of negligence.

408(a) NEGLIGENCE

(When I use the term negligence I mean) - Negligence consists of failing to use ordinary care, that is, in doing something which a reasonably (or ordinarily) careful person would not do, or in failure to do something which such a person would do, under circumstances similar to those shown by the evidence.

It is for you to decide how a reasonably prudent person would act under these circumstances, and whether or not the (P), (D), (Parties), (Mr. A), did so.

Facts and circumstances vary so much that the law ~~does~~ can not say in advance how a reasonable person would act; in every situation; that is for you to decide.

408(b) NEGLIGENCE

When I use the word care, I mean reasonable care; or prudent, I mean reasonably prudent; or careful, I mean "reasonably careful".

When I say negligent or negligence, I mean careful or careless as defined above.

408(c) NEGLIGENCE - REASON

The reason that the law does not say what a reasonably careful person would do is that the circumstances are so numerous and so variable, that it would be impossible to lay down rules for all cases in advance.

Thus, one might ask whether it is negligent to drive at 70 miles per hour. The answer depends on the circumstances. If, in broad daylight, on a straightaway of the Pennsylvania Turnpike, where 70 mph is the speed limit, No. If, with brakes that were defective, Yes. If, on a downtown street in a city, Yes. If, at night on a turnpike, perhaps. If the roadway were wet, slippery or icy, perhaps, depending on how wet, slippery or icy. If in a thick "pea soup" fog, it would be negligent to drive at all.

The answer in each case must depend upon what you believe that a reasonably careful person would do.

408 NEGLIGENCE - DEFINITION

There is no mystery about the word NEGLIGENCE.

Negligence means substantially the same thing as carelessness, and negligent means substantially the same thing as careless. Some carelessness does not involve other people or have any legal consequences, for example, whether I carelessly fail to brush my hair or have my car washed; no one else is involved. But where carelessness results in injury to another person by violating his rights, and the law entitles the injured person to be compensated for that injury, the word used to describe the carelessness is negligence. Thus, if I carelessly drive on the wrong side of the road or if I carelessly fail to have my brakes in working order and injure someone as a result, my carelessness has legal consequences and is called negligence.

E. H. N.

The word negligence is a long one, but it has a simple meaning. It means carelessness. It has legal consequences when it results in injury to another person.

E. H. N.

Negligence is the doing of an act which a reasonably prudent person would not do, or the failure to do something which a reasonably prudent person would do, actuated by these considerations which ordinarily regulate the conduct of human affairs.

It is the failure to use ordinary care in the management of one's property or person.

Calif. 101

Ordinary care is that care which persons of ordinary prudence exercise in the management of their own affairs in order to avoid injury to themselves or others.

Calif. 102

It varies according to the nature of the act and the surrounding circumstances, and the amount of danger that should reasonably be involved.

E.H.N.
See Calif. 102A

M.L.E. 408 NEGLIGENCE - DEFINITION

Negligence is the absence of, or failure to exercise such care as the circumstances reasonably require.

176 Md 1
16 MLE 342

The standard required is what an ordinary or reasonably prudent and careful man would exercise under similar circumstances.

175 Md 522
16 MLE 343

Bouvier, L. D.

Negligence is the mission to do something which a reasonable man..... would do, or the doing of something which a prudent and reasonable man would not do.

11 Ex 784
Webb-Pollock Torts 587

The standard is not that of a particular man, but of the average prudent man.

3 Bing (NC) 568
Bouvier L.D. 3rd 2312

O.E.D. - Negligence from NEG. (not) + legere (pick up) (Century - ne + legere (gather).

Want of attention to what ought to be done or looked after; carelessness with regard to one's duty or business; lack of necessary or ordinary care in doing something.

7 O.E.D. 80

JBG

408 (NEGLIGENCE)

Sillik v. Hoeck, 168 Md 639

Plaintiff was about to board a streetcar, and crossed in front of it, so that plaintiff did not see defendant's truck, which was passing on the right of the streetcar, so was struck and injured.

The plaintiff claims that the defendant was negligent because had the driver used due and ordinary care, he should have anticipated that passengers would approach the street car to go aboard, this being indicated that the car slowed down for a stop. You are instructed that this is a legitimate question for you to consider, to determine whether or not the defendant used the ordinary care and prudence of a person in like circumstances, in connection with anticipating the approach of a pedestrian to board the streetcar.

JBG

404

408 (NEGLIGENCE)

State v. B & O, 171 Md 584

This is an action on account of the death of a passenger in co-defendant's bus, which, on a rainy night at a railroad crossing, was struck by co-defendant's train.

You are instructed that the evidence in this case discloses that if the driver had looked, he would necessarily have seen the train in time to have avoided the collision. If under these circumstances you find that the driver of the bus failed to look, or to see the train if he did look, or that he failed to stop after he had looked and seen the train, then you are justified in drawing the inference of negligence on his part.

JBG

Com Carrier
Highest Degree.

406 (DUTY TO AVOID INJURY TO OTHERS)

Dilley v. Transit Co., 183 Md 557 (1944)

This is not an automobile case. It involved the injury of a passenger before he had entered the train, but was still in a passenger terminal or enclosure. He was pushed by a crowd of persons there and injured.

You are informed that a common carrier of passengers is required to use the utmost degree of care, skill and diligence in everything that concerns its passengers' safety. The plaintiff in this case was entitled to that care on the part of the defendant, even though he had not entered the train but was in its station enclosure, had paid his fare and was awaiting transportation. It is the duty of a common carrier to provide a safe and convenient mode of access to its trains.

JBG

Munic. Corp.
Highways

406 (GENERAL DUTY TO USE CARE)

Baltimore v. Thompson, 171 Md 410

Plaintiff was a passenger in an automobile and was injured when the car collided with a girder on a foggy night. Plaintiff claims City was negligent in not properly lighting or otherwise warning the driver of the traffic hazzard.

You are instructed that there is a duty on the part of the municipality, in the control of the public highways, to protect travelers thereon from the danger incident to an obstruction within the lines of the highway, where the obstruction is of such a character as to seriously imperil the safety of traffic.

JBG

Foreseeability

408 (NEGLIGENCE)

NOT AN AUTOMOBILE CASE

Aleshire v. State, 225 Md 355-65

This case was reversed in the Court of Appeals and a new trial ordered because the instructions to the jury were too general and omitted to include therein the concept of whether, in the exercise of due care, the injuries which were received through the defendant's act were foreseeable. An instruction on foreseeability had been submitted, but trial judge (Digges, J.) instructed orally and defendant excepted because foreseeability was not covered.

In this case a sand hopper was filled with damp sand, and the decedent and two other men had gone to the hopper, which had been shut down for the day, in order to make repairs. Defendant drove his truck under the hopper and climbed up to a control room, where he pulled a lever which activated the outlet at the bottom of the hopper. Deceased was drawn into the hopper and killed. Suggested instructions follow:

You are instructed that the crucial question in this case is whether the defendant Aleshire, under all of the circumstances in this case, could have reasonably foreseen that operating the chute to fill his truck would have caused damage to one or more of the men standing on the top of the bin.

Your attention is called to the fact that his testimony was to the effect that he did not know that the men were standing on the top of the bin, but you should also inquire whether, in view of all of the circumstances of the case, a reasonably prudent person would have anticipated that persons might be on top of the bin and would have inquired

408 (NEGLIGENCE) Contd.

with respect thereto before exposing them to the damage of withdrawing the sand.

38 Am. Jur., Negligence, paragraph 23

Texas Company v. Pecora, 208 Md 281, 295

Sanders v. Williams, 209 Md 149, 152

Katzel v. Clark, 215 Md 54, 62

State v. Washington, 130 Md 603, 612-613

Imbach v. Tate, 203 Md 348, 357

Bradley v. Yates, 218 Md 263, 270

Adams v. Carey, 172 Md 173, 186

Harper & James, Torts, §20.5

Prosser on Torts, (2nd Ed.), §30

410 CONTRIBUTORY NEGLIGENCE

Contributory negligence means negligence on the part of the plaintiff, (Mr. P), that substantially contributed to cause the alleged accident, (injury), (death), (damage).

JBG

410 (CONTRIBUTORY NEGLIGENCE)

Goldman v. Johnson Motor Lines, 192 Md 24 (1949)

Plaintiff had parked his car to the right of a four-lane highway about 50 feet in front of a disabled car, and 5 or 6 feet into the highway. Defendant struck the disabled car and produced resulting injury to the plaintiff, who was then at the site of the disabled car and helping its occupants. The fact of contributory negligence was submitted to the jury and held to be error.

You are instructed that where a defendant relies on the plaintiff's negligence as a bar to recovery, such negligence must be concurrent and a proximate cause of the accident.

JBG

Rt of Way
Ind Intersection

410 (CONTRIBUTORY NEGLIGENCE)

Bush v. Mohrlein, 191 Md 418 (1948)

This is a collision at an uncontrolled intersection. An instruction can be couched in the language of the Court of Appeals as follows:

It is the duty of the driver approaching from the left to yield the right of way to the vehicle approaching from the right in those instances where the vehicles are approaching the intersection under such circumstances that a collision is likely to occur. If the vehicle approaching from the left is crossing the intersection at a time when the vehicle approaching from the right is at such a distance from the intersection that its movement could not reasonably be supposed to create any danger that the two vehicles would collide, the driver approaching from the left is not required to wait until the vehicle from the right has passed.

JBG

Children - 5yr old.

410 (CONTRIBUTORY NEGLIGENCE)

State use of
Taylor v. Barlly, 216 Md 94 (1958)

This case involved a five year, ten months old child who was struck while crossing the street in front of a playground by an automobile, and the defendant relied on contributory negligence. The Court recognized that a child of five years or over may be guilty of contributory negligence, but added:

A child of tender years is bound only to use that degree of care which ordinarily prudent children of the same age, experience and intelligence are accustomed to use under the same circumstances, and they assume the risk only of dangers, the existence of which they know, or of which, in the exercise of this degree of care, they should have known.

JBG

Pedestrian ab X

410 (CONTRIBUTORY NEGLIGENCE)

Marrifield v. Hoffberger, 147 Md 134

The plaintiff, a pedestrian, got off a West-bound streetcar, walked in front of it and began to cross to the South side of the street at the corner of the intersection. The defendant, headed South at a speed greater than provided by law, struck and injured the plaintiff. Plaintiff did not see defendant's vehicle approaching, and defendant defended on the ground of contributory negligence.

You are instructed that all pedestrians have the right of way over vehicles at street crossings not controlled by traffic officers. It is the duty of the driver of a vehicle to have his vehicle under such control, upon approaching an intersection, so that he may be able to

stop and yield the right of way, if necessary, to pedestrians crossing at the street intersection.

JBG

410 (CONTRIBUTORY NEGLIGENCE)

Beford v. Lohmeyer, 147 Md 472 (1925)

Plaintiff, after getting off a streetcar, waited until the streetcar had passed, then, after looking both North and South, began to cross the street at the street crossing. Defendant, unable to see the plaintiff because the streetcar screened her, struck and injured the plaintiff

It is the duty of a driver, upon approaching an intersection, to have the speed of the car so reduced and to keep it under such control so as to avoid the danger of collision with pedestrians. If you find that the defendant was driving at a speed greater than was reasonable and proper under the circumstances, and failed to give any signal that he was approaching, then you are instructed that he breached his duty to use proper care at an intersection.

JBG

Rd.

410 (CONTRIBUTORY NEGLIGENCE)

Schmidt v. Greyhound Corporation, 228 Md 15

In this case the plaintiff alighted from a bus and, after the bus had moved on, attempted to walk across the highway. Found to be guilty of contributory negligence as a matter of law. Case affirmed.

If the plaintiff knew his view of the road was obscured, and was not particularly careful to watch for cars before entering out into the road, then you must find him guilty of contributory negligence. The same is true even if he didn't know that his view was obscured and you believe that under the circumstances a reasonably prudent person would have known.

JBG

410 (CONTRIBUTORY NEGLIGENCE)

Yellow Cab Co. v. Lacy, 165 Md 588 (1934)

A passenger's failure to warn the driver of approaching danger is a question of contributory negligence for the jury. In this case, negligence is defined as the lack of ordinary care--that degree of caution, attention, activity and skill which are habitually employed by, or may be reasonably expected from, persons in the situation of the respective parties under the circumstances confronting them at the time.

JBG

410 (CONTRIBUTORY NEGLIGENCE) Ped

Legum v. State, 167 Md 339 (1934)

By statute, pedestrians have the right of way at street crossings, and motor vehicles between street crossings, and each is bound to recognize the right conferred by the statute upon the other and regulate his movements accordingly. So, while a pedestrian may walk across the street between crossings, he is bound to exercise a high degree of care to avoid injury from traffic than he is if he is crossing at a street crossing; and, while the operator of a motor vehicle may, in the ordinary course, traverse a street crossing, he is bound to exercise a higher degree of care to discover and avoid injury to pedestrians in the lawful use of such crossings than to discover and avoid pedestrians using the highway between crossings, though each may assume that where it is reasonably possible, the other will yield the right of way as required by statute. A pedestrian crossing a street directly in the path of oncoming traffic is under a legal obligation to use reasonable care to protect himself, to discover that which a reasonable man should have anticipated, and to avoid it whether he be within or without the limits of a crosswalk.

Nn

JBG

410 (CONTRIBUTORY NEGLIGENCE)

Ebert Ice Co. v. Eaton, 171 Md 30 (1936) Ped

A pedestrian started across a highway and saw two vehicles approaching from his left. He crossed behind the first vehicle and was struck on the far side of the road by the second vehicle. A verdict for the plaintiff was affirmed.

A car attempting to overtake and pass another has a duty to see that the way on the left side of the highway is clear, and if he failed to observe that there was a pedestrian in the highway, this might, under the circumstances amount to negligence and sustain a verdict for the plaintiff.

If you find from the evidence that the defendant, in attempting to pass the car ahead, turned to the opposite lane of traffic on his left without taking care to observe whether or not that lane was clear, or, if he did look, failed to see the plaintiff who was walking in the in the lane, then this would amount to failure on his part to exercise due care.

JBG

410 (CONTRIBUTORY NEGLIGENCE)

Child
CN

In this case a four year old child was struck by a taxicab. Instruction follows:

Miller v. Graff, 196 Md 609

You are instructed, as a matter of law, that a child four years of age cannot be guilty of contributory negligence.

There is in this case testimony tending to show that the four year old child suddenly entered the highway from the sidewalk, and was struck by the defendant's car. Under these circumstances, you are instructed that it was the duty of the defendant to exercise due and reasonable care with respect to keeping an outlook for children, and with respect to the speed at which he operated his car.

If you find that the proximate cause of the injury to the child was the failure on the part of the defendant to exercise due care in the operation of his car, either with respect to the speed at which it was driven, or in his failure to keep a lookout for children on the roadway, then your verdict in ~~this~~ The case may be for the plaintiff. Otherwise, it should be for the defendant.

JBG

410 (Contributory Negligence)

Foreman Co. v. Williams, 171 Md 55 (1936)

Plaintiff was walking with his back to defendant's truck. While he saw the truck, he did not anticipate any hazard therefrom, when he was run over by the defendant's backing his truck down the road without keeping a watch for workmen in the way or giving any warning.

Where the defendant did not have a superior right of way, it is not negligent for the plaintiff to fail to anticipate a negligent act or omission of the defendant.

JBG

410 (Contributory Negligence)

Taking from jury.

Jones v. Wayman, 169 Md 670 (1936)

To justify the trial court in withdrawing the case from the consideration of the jury, on the ground of contributory negligence by the plaintiff, the evidence must show some prominent and decisive negligent act on the part of the plaintiff which directly contributed to the accident and was a proximate case thereof, and that this negligent act must be of so prominent and decisive a character as to leave no room for difference of opinion thereon by reasonable minds. Otherwise, the issue must be submitted to the jury.

JBG

410 (CONTRIBUTORY NEGLIGENCE)

T intersection

York Corporation v. Sachs, 167 Md 113 (1934)

The plaintiff, a six year old child, a pedestrian, was struck by the car of the defendant when plaintiff attempted to cross the street at an intersection. There was a conflict in testimony as to whether the accident occurred at the street intersection. Held that a road intersecting one side of another road, but not crossing it, is an intersection within the meaning of the statute, and gives the right of way to pedestrians at such a crossing. (T intersection)

JBG

410 (CONTRIBUTORY NEGLIGENCE)

Blinded by lights

Ford v. Bradford, 213 Md 534

In this case a tractor-trailer, the defendant, because of electrical failure, pulled to the side of the road and stopped. The plaintiff, travelling in the same direction, collided with the rear end. On the issue of contributory negligence, it was contended in his behalf that he had been blinded by approaching lights.

Instruction:

It is for you to determine, ladies and gentlemen, whether the plaintiff exercised reasonable care in the operation of his car by reason of the fact that his vision of the standing truck was interfered with by the approaching lights in the opposite lane.

JBG

410 (CONTRIBUTORY NEGLIGENCE)

Greer Lines Co. v. Roberts, 216 Md 69

The plaintiff was standing in front of a truck while it was being repaired. Defendant, who was repairing the truck, directed X, seated in its cab, to start the motor. When the motor started, the truck lurched forward and injured the plaintiff. Resulted in a verdict of $67,500. Held in this case that the plaintiff was not guilty of contributory negligence as a matter of law.

The jury was instructed that the plaintiff is required to exercise reasonable care for his own saftey, and the Court commented that this is little more than what is actually practiced under the instinct of self-preservation. What an ordinarily prudent and careful person would do under a given set of circumstances is usually controlled by the instinctive urge to protect himself from harm.

JBG

410 (CONTRIBUTORY NEGLIGENCE)

Kent County v. Pardee, 151 Md 68

Suit by a wife to recover for personal injuries sustained when an automobile operated by her husband was damaged in crossing a washed-out place in a road; it escaped control of the driver and plunged over a bridge, injuring the plaintiff. An instruction was offered by the defendant to the effect that because she had previously traversed the road and knew of the condition of the roadway, she was required to exercise "more than ordinary care." Refusal of this instruction was approved. The Court held that she was responsible for the exercise of only ordinary care and prudence on her part, and affirmed the judgment for the plaintiff.

JBG

410 (CONTRIBUTORY NEGLIGENCE)

Graham v. Western Maryland Dairy, 19- Md 210-214

In this case a three year old child was injured while playing on a tricycle in an alley, while the area was being serviced by a milk truck. The jury was allowed to consider whether or not the child's parents had been negligent in its care. If so, such negligence would defeat the claim of the plaintiff child. Instruction:

We instruct you, as a matter of law, that a child three years old is too young and immature to be charged with contributory negligence, which would defeat the plaintiff's claim. However, inasmuch as the child was not of sufficient development to be responsible for its own conduct, the Court instructs you that you may determine from the evidence whether or not the mother, who was in charge of the child on the occasion in question, had been guilty of contributory negligence and, if so, such negligence would defeat her right of recovery.

SEE ALSO:

Cumberland v. Lottig, 125 Md 42
Caroline County v. Beulah, 153 Md 221
York Co. v. Sachs, 1 7 Md 113

In the latter case, the Court said: "If the child be so young as not to be able to take care of itself, then parental neglect, resulting in injury, may be imputed to the child."

United v. Carneal, 110 Md 211
Caroline County v. Beulah, 153 Md 221

JBG

410 (CONTRIBUTORY NEGLIGENCE)

Legum v. Hough, 192 Md 1

Trial in this case resulted in a verdict in favor of the plaintiff for damages to his automobile, affirmed on appeal.

Instruction:

The accident in this case occurred at an intersection uncontrolled by traffic lights or stop signs. In this situation, the defendant was the favored driver, for he was approaching the intersection from the right, whereas the plaintiff was approaching from the left.

The defendant claims that he had the right of way and that there is no evidence of primary negligence on his part, and that there can be no recovery in favor of the plaintiff in this case because the plaintiff was the unfavored driver and bound to yield the right of way to the defendant. Your disposition of this case will depend upon your conclusion as to where the respective drivers were with respect to the intersection at the time the plaintiff approached it. If they approached the intersection at approximately the same time, then it was the plaintiff's duty to stop and to yield the right of way to the defendant, and if he failed to do so, that circumstance would bar his right of recovery. However, if he did look to his right as he approached the intersection, and saw that the roadway was clear of traffic for a distance so great that he could safely cross the roadway at normal speed before any car in sight could interfere, if driven within the speed limit, he had a right to cross the intersection. While the plaintiff was bound to yield the right of way to oncoming traffic on his right, he may proceed if such traffic is so far removed that it could not

interfere with his passage if driven at a lawful speed.

SEE ALSO:

Taxicab Co. v. Ottenritter, 151 Md 525, 531
Jackson v. Leach, 160 Md 139
Hendler Creamery v. Friedman, 160 Md 526
Jersey Ice Cream Co. v. Bach, 161 Md 285
Minch v. Hilkowitz, 162 Md 649
Paolini v. Mill & Lumber v. Mill & Lumber Co., 165 Md 45
Yellow Cab v. Lacy, 165 Md 588
Yellow Cab v. Bradin, 172 Md 388
Warner v. Markoe, 171 Md 351
Wlodkowski v. Yerkaitis, 190 Md 128, 132-133
Kremer v. Fleetway Cab Co., 197 Md 561
Askin v. Long, 176 Md 545

JBG

410 (CONTRIBUTORY NEGLIGENCE)

Gavin v. Tinkler, 170 Md 461

Plaintiff was a passenger in a truck which overtook another truck and collided with the rear thereof. Case properly submitted to the jury, both on the issue of primary negligence and contributory negligence, by the instruction granted. Action of contributory negligence was claimed to be that the plaintiff discussed with the driver of the truck in which he was riding, the latter's attempt to pass the truck in front at a time when the truck was crossing an intersection. Held to be a jury question and properly submitted to the jury. Case clearly recognized that the negligence of the driver was not imputable to the passenger.

Cited McAdoo v. State, 136 Md 452.

See Also cases of State, use of Shipley, v. Lupton, 163 Md 180; Montgomery Bus Lines v. Diehl, 158 Md 233; Yellow Cab Co. v. Lacy, 165 Md 583; B & O v. State, 169 Md 343.

JBG

410 (CONTRIBUTORY NEGLIGENCE)

Baker v. Commissioner, 228 Md 454

This case was reversed by the Court of Appeals because of an inadequate instruction with respect to the burden of proof as to contributory negligence. While the Court did tell the jury that the defendant had the burden of proof of any affirmative defense, it did not state that contributory negligence was such a defense. This was held to be error.

For further discussion of related questions, see Wintrobe v. Hart, 178 Md 289, 296-298, and Dunnill v. Bloomberg, 228 Md 230, and cases there cited.

JBG

410 (CONTRIBUTORY NEGLIGENCE)

Davidson Transfer v. Transit Co., 183 Md 263 (1944)

This case is a collision at an intersection between a tractor-trailer and a streetcar. The Court here squarely decided that the burden of proof of contributory negligence is upon the defendant who asserts it. A suggested instruction is as follows:

In this case the defendant asserts as an affirmative defense the claim that the plaintiff's right to recovery is defeated by his own negligence which contributed to the happening of the accident. The Court instructs you as a matter of law that the defendant has the burden of convincing you by a fair preponderance of the testimony that the happening of the accident, and the injuries that flowed therefrom, were the result of negligence on the part of the plaintiff--that is, the failure on his part to exercise the degree of care that an ordinarily prudent person would have used under like circumstances.

If you find contributory negligence on the part of the plaintiff, as thus defined, then any right to recover in this case is defeated, and your verdict should be for the defendant.

In evaluating the testimony concerning the care exercised by the respective parties, you are advised that there is a well-known disposition of men to act prudently to avoid damage, and unless the evidence discloses the contrary, there is a presumption that the parties did exercise proper care.

JBG

410 (CONTRIBUTORY NEGLIGENCE)

Stehley v. Belle Cab, 194 Md 550

Plaintiff, in crossing the street, looked to the South and then continued across, and was hit by the defendant's truck, approaching from the South.

When the plaintiff started across the street, and there was no threat of collision, his right of way continued until he got all the way across the street, so long as he used reasonable expedition. He is not to be charged with being negligent because he did not continue to look to the left. If he did in fact look, as he claimed, upon entering upon the crossing, he is entitled to rely upon the defendant's respect for his right of way, and would not be guilty of contributory negligence.

JBG

410 (CONTRIBUTORY NEGLIGENCE)

State, use of Kolish, v. Ry, 149 Md 443

In this case a four year old child ran into the side of a streetcar and was killed. The Court commented that a child of four years of age is not guilty of contributory negligence by running into the side of a streetcar.

JBG

410 (CONTRIBUTORY NEGLIGENCE)

Kane v. Williams 229 Md 59

The verdict was denied for a lad riding a bicycle who failed to stop at an intersection with a stop sign against him. It was held that a person riding a bicycle must obey the motor vehicle rules, just as would the driver of an automobile.

JBG

410 (CONTRIBUTORY NEGLIGENCE)

Martin v. Rassignol, 226 Md 363

In this case a police car was chasing a speeder, believed to be a hit and run driver, going 110 m.p.h. without lights in a residential area, and collided with the car being pursued. In a suit by the officer, the defendant resisted on the ground of contributory negligence. It was held to be a question for the jury.

The driver of an emergency vehicle has special privileges when answering an emergency call or pursuing someone in violation of the law. The usual rules of the road do not apply to him. However, he must not take risks that unreasonably endanger other persons on the road. It is for you to decide whether, under the circumstances of this case, it was reasonable for the policeman to continue his pursuit of the alleged offender.

JBG

410 (CONTRIBUTORY NEGLIGENCE)

Grove v. Delp, 227 Md 316

Plaintiff parked and got out of her car on the side where traffic was moving. She looked when alighting, but thereafter she remained adjacent to the car, removing some object therefrom. Defendant hit and injured her. She was held guilty of contributory negligence as a matter of law.

If you find that the plaintiff left the place of safety for one of danger when she could have easily avoided doing so, you may find her negligent. If you find that she entered the street with moving traffic without keeping a proper lookout for her safety, you may find her negligent.

412 LEAVING PLACE OF SAFETY

It is negligent for a person to leave a place of safety and enter a place of danger, without taking appropriate precautions for his own safety.

Such negligence may consist of not looking to see approaching traffic; or looking without sufficient care, or some other failure to use his senses reasonably for his own safety.

192 Md 419
220 Md 450
227 Md 537
228 Md 454

JBG

412 (LEAVING PLACE OF SAFETY)

Campbell v. Jenifer, 222 Md 106

This was a case in which a pedestrian crossed a street, divided by a median marker, between intersections, and was hit by defendant's car. Evidence that the plaintiff was intoxicated. Judgment n.o.v. for defendant affirmed. The case recognized that a pedestrian who crosses between intersections must use greater care for his safety than would be required at a preferred crossing.

Instruction:

A pedestrian crossing a street between intersections is guilty of contributory negligence as a matter of law if he fails to look for approaching motor vehicles or, if having looked, he fails to see such motor vehicles as are there, and fails to guard against being hit thereby.

SEE ALSO:

Love v. State, use of Nelson, 217 Md 290

JBG

412 (LEAVING PLACE OF SAFETY)

Phillips v. Baltimore Transit, 194 Md 527

As plaintiff approached a street corner, she saw defendant's car about a block away. When she reached the southern rail of the westbound tracks, the streetcar was more than thirty-five or forty feet away. Through an error of judgement, she attempted to cross the track, thinking that the car would stop. This it did not do, and she was struck.

You are instructed, ladies and gentlemen of the jury, that a pedestrian does not have a right of way over a streetcar in the absence of a traffic light or other control device. Both the operator of the car and the pedestrian owed each other a reciprocal duty of reasonable care. Where a pedestrian is in a position of safety, he has a duty to remain in that position except in so far as a reasonable man under the circumstances would take the risk of crossing in front of a car in disregard of the danger of collision.

JBG

412 (LEAVING PLACE OF SAFETY)

Jackson v. Yellow Cab Co., 222 Md 367

In this case a pedestrian was crossing a street and had the right of way when she started, but when she reached the center area of the street, she took refuge on a safety island. She extended her hand so that it was injured by a defendant adjacent to her but not encroaching on the safety island. She was held responsible as a matter of contributory negligence, and recovery denied. It was conceded that she had the right of way when she started her trip, but it was held that she abandoned her right to continue across the street when she took refuge on the safety island. Thereafter, when she extended her arm into the traffic lane, it was a denial of the right of way then held by the taxi. Instruction:

If you find from the evidence in this case that the plaintiff initially had the right of way to cross the street, but that when she reached the center area of the street she abandoned her right of way for refuge on the center island, this operated to abrogate the original right of way she had, and she was required to yield right of way to oncoming vehicular traffic.

If you find that she was in a place of safety on the traffic island, then it was negligent for her to leave that island and contest the right of way with the vehicular traffic without taking adequate safeguards for her own safety. This was equally true whether she physically left the island or whether she extended a part of her body over into the traffic lane so as to interfere with oncoming traffic.

JBG

415 (ASSUMPTION OF RISK) (Not auto case)

Evans v. Johns Hopkins University, 224 Md 234

In this case Evans was working in the Johns Hopkins Laboratory, engaged in some chemical experiments which resulted in explosion and injury. He sued the University and recovery was denied on the ground that there was an assumption of risk by him under the circumstances detailed in the evidence.

SEE SIMILAR CASES:

Bull S. S. Lines v. Fisher, 196 Md 519-525
Warner v. Markoe, 171 Md 351

Held that an employer-employee relationship is not necessary to apply the doctrine of assumption of risk. In this case the evidence clearly showed that there were other laboratories available to the plaintiff, but that he elected to use his regular laboratory without safety features because it was more convenient for him to do so.

420(a) LAST CLEAR CHANCE

Although plaintiff may have been negligent in creating a situation of danger, if defendant later (thereafter) had (a) a reasonable opportunity to discover it and, (b) time to avoid it, but failed to do so, then defendant had the Last Clear Chance to avoid the accident, and if he failed to use his Last Clear Chance, defendant is liable even though plaintiff had at a previous time been negligent in creating the dangerous situation.

203 Md 426
194 Md 611
208 Md 586

The defendant's negligence must have occurred after the plaintiff's negligence, and not at the same time (sequential, not concurrent).

194 Md 611
218 Md 118
192 Md 278

420(b) LAST CLEAR CHANCE

A defendant is not chargeable with failure to use the Last Clear Chance when he has not time enough to avoid the accident.

194 Md 656
188 Md 646

Where both parties act negligently at the same time, i.e., where negligence is concurrent, the Last Clear Chance rule does not apply.

160 Md 647
201 Md 345

Last Clear Chance applies only when some independent circumstance gives defendant a fresh opportunity to avoid injury.

211 Md 504

The doctrine of Last Clear Chance requires actual or constructive knowledge of the peril created by plaintiff plus time enough to make an effort to avoid it.

225 Md 507
224 Md 14

JBG

420 (LAST CLEAR CHANCE)

Legum v. State, 167 Md 339

This is a case of a pedestrian hit in the middle of the street by the defendant; resulted in a verdict for the plaintiff reversed on appeal, because the facts did not justify application of the doctrine of last clear chance. In this case the doctrine of last clear chance was held not to be applicable, because the driver was justified in concluding that the pedestrian would yield the right of way and retire to a place of safety.

Suggested instruction with respect to last clear chance:

Where one has, through an act of his own negligence, placed himself in danger of injury at the hands of another which he is unable to prevent, if the other knows, or should know, of his peril in time to avoid injuring him, and he fails to exercise reasonable care to do so, he is guilty of actionable negligence.

Suggested instruction:

A pedestrian crossing a street directly in the path of oncoming traffic is under an obligation to use reasonable care to protect himself, to discover danger which a reasonable man should have anticipated, and to avoid it whether he be within or without the limits of a crossover. (Question: Is not the pedestrian, like the driver, justified in assuming that when he is in a crossover, the driver will yield the right of way to the pedestrian?)

JBG

420 (LAST CLEAR CHANCE)

State, use of Henderson, v. United, 139 Md 306

Defendant's streetcar collided with plaintiff's auto. Plaintiff started driving across the tracks without looking in the direction from which the streetcar was approaching. Held to be contributory negligence as a matter of law. Held to be error to instruct as to last clear chance, because no evidence that defendant could have avoided the accident.

JBG

420 (LAST CLEAR CHANCE)

West v. Belle Isle Cab Co., 203 Md 244

In this case there was a sharp conflict in the testimony as to whether the pedestrian was hit by the taxi while she was in a cross-walk or whether, as claimed by the defendant, she darted out between intersections and between two parked cars, in front of the taxi, and was there struck. The instructions to the jury were criticized by counsel, but the Court held they were substantially accurate and affirmed the case. If instructions are as a whole correct, won't reverse for technical, non-prejudicial errors.

JBG

420 (LAST CLEAR CHANCE)

State, use of Stehley, v. Belle Isle Cab Co., 194 Md 550

In this case a judgment for the defendant was reversed on appeal. Stehley stepped off a place of safety and proceeded to cross outside the crosswalk, beginning on a green light but the light changed before he was through. When the defendant's light turned green, he proceeded through the light and struck Stehley. Held in this case that in the absence of a marked crosswalk, the defendant's walk extends from the building line to the curb. Held in this case that a pedestrian has the right of way to continue walking on a green light if he has begun crossing the street on a green light. Where a pedestrian is not within the crosswalk, a driver is justified in assuming that a pedestrian will not be crossing between crosswalks. Where it is apparent that a driver is exceeding the speed limit, the question of whether he had a last clear chance is a question to be decided by the jury.

JBG

420 (LAST CLEAR CHANCE)

Victor Lynn Lines v. State, 199 Md 468

In this case a car had become disabled on the shoulder of the road, and was being pushed ahead in the slow lane of traffic toward a gas station. It was sideswiped by defendant's truck. Resisted on the ground of contributory negligence. Case was held to be properly submitted to the jury on the issue of the doctrine of last clear chance. The Court adopted the criterion set out by Judge Offutt in Legum v. State, 167 Md 339, in which the Judge said that:

> "The basis of the doctrine of last clear chance is that the actor either has actual knowledge, or is under some legal duty which charges him with knowledge, (a) that if he persists in a course which he is pursuing it will result in injury to another, (b) which the other cannot, because of ignorance or disability, be reasonably expected to avoid, (c) when the actor either has or is chargeable with that knowledge in time by the exercise of ordinary care to avoid injuring the plaintiff, but (d) fails to do so."

Suggested instruction:

Ladies and gentlemen, the defense in this case is made that there was contributory negligence on the part of the driver of the plaintiff's car and, as we have previously instructed you, if there is such contributory negligence it would defeat the plaintiff's right of recovery in this case, unless you find from the evidence that the defendant had the last clear chance in which it was possible for him to have avoided injury to the plaintiff. By this we mean that if, after the defendant learned that the plaintiff was pursuing his course along the right hand lane of the road in such a manner as to be guilty of negligence in doing so, nevertheless if the defendant's driver in this case knew of this fact, and that it was

U20

420 (LAST CLEAR CHANCE) Contd.

apparent to him that the plaintiff was expected to continue such action, then, if you find that the defendant, when he knew of the plaintiff's predicament, had sufficient time to avoid him by stopping his tractor-trailer or by turning aside, it was his duty to do so. If, under those circumstances he omitted to do so, then the defendant would become liable.

JBG

420 (LAST CLEAR CHANCE)

Meldrum v. Kellam Distributing Co., 211 Md 504

In this case a tractor-trailer approached an intersection as the light turned green, and attempted to make a left turn although the driver saw the defendant's car 75 yards away, approaching from the opposite direction. Verdict for the plaintiff was reversed on appeal. The claim was held to be defeated by contributory negligence as a matter of law. The Court relied upon Art. 66-1/2, sec. 197, which requires one making a left turn at an intersection to yield the right of way to any car approaching from the opposite direction at the intersection and so close as to constitute an immediate hazard.

Here the Court seemed to require that the driver of the tractor-trailer, because of the dangerous nature of the vehicle, exercise greater vigilance to avoid injury to others. There is doubt as to the validity of this statement, because elsewhere the Court of Appeals has recognized that the degree of care is the same whether one operates a heavy or a light vehicle--that degree of care which an ordinarily prudent person would exercise under like circumstances, including the nature of the vehicle and the nature of the hazards.

Held that the doctrine of last clear chance would not be applicable in this case. Held to be error to include the doctrine of last clear chance in the instructions.

JBG

420 (LAST CLEAR CHANCE)

Fowler v. DeFontes, 221 Md 567

Plaintiff was operating a horsedrawn vehicle and entered a boulevard as the unfavored vehicle, and when part way across the street, saw an oncoming car. He continued across the street and a collision between the two resulted. There was a verdict for the plaintiff upon the theory that the defendant had the last clear chance to avoid the accident. This was abrogated by the judgment n.o.v., which was affirmed by the Court of Appeals.

The Court held that the driver of the car which was the favored vehicle had the right to assume that the horsedrawn vehicle would stop and yield the right of way, hence the plaintiff's claim was defeated by his contributory negligence. The doctrine of last clear chance was held not to be applicable.

Check 3 MLE Auto 161 (?)

JBG

420 (LAST CLEAR CHANCE)

Shriner v. Mullhausen, 210 Md 104

Collision at a public road and a private driveway; car on the road and tractor with a manure spreader entering the public road from a private driveway. The car came over a hill which had screened it from the operator of the tractor until a relatively short distance away. Duty of the tractor driver entering from a private road to stop and yield the right of way. Court refused to submit to the jury the issue of last clear chance.

JBG

420 (LAST CLEAR CHANCE)

Shaivitz v. Etmanski, 164 Md 125

In this case the plaintiff was a pedestrian, walking across the street. Testimony indicated that he looked to his left, saw the way was clear, and continued to cross the street, where he was hit by the defendant's vehicle. The Court recognizes that one who has the right of way when he starts across the street has a right to continue across, notwithstanding the fact that the signal may change, provided he proceeds with reasonable dispatch. Suggested instruction:

Ladies and gentlemen of the jury, even if you find that there was a want of ordinary care and caution on the part of the plaintiff, nevertheless he is entitled to recover provided you find that the operator of the truck which collided with him could have avoided striking the plaintiff by the exercise of ordinary care after he saw, or by the exercise of ordinary care might have seen, that the plaintiff was walking on the street and in danger of being struck by the truck.

JBG

420 (LAST CLEAR CHANCE)

Sears v. B & O, 219 Md 118

This was a grade-crossing collision between a truck and a locomotive. The plaintiff truck driver stopped and looked, but saw no train, then proceeded across the track and was struck. Held that a directed verdict for the defendant should have been granted. There was contributory negligence as a matter of law, based upon the testimony of the plaintiff, who claimed that he stopped and looked but did not see a train that was clearly visible. The Court held that the doctrine of last clear chance was not applicable. There was no fresh opportunity for the defendant to avoid the consequences ~~for~~ of the plaintiff's contributory negligence.

JBG

420 (LAST CLEAR CHANCE)

Taylor v. Western Maryland Railway Co., 157 Md 630

Here the plaintiff, crossing the railroad company's tracks, stopped so close to the tracks that part of the car was hit by the locomotive. The plaintiff was guilty of contributory negligence as as matter of law. Court declined to submit the issue of last clear chance to the jury.

JBG

420 (LAST CLEAR CHANCE)

Dehn v. Matusak, 224 Md 14

In this case the defendant was backing out of a parking place and collided with plaintiff's car, which was illegally parked double, and which defendant did not see. Concedes negligence in double parking, but claims denial of instruction on the doctrine of last clear chance. Verdict for defendant is affirmed. Held that the defendant did not know of the plaintiff's danger and had no opportunity in time to avoid injury. Something new and independent of the original negligence is necessary to charge him with negligence under the doctrine of last clear chance.

JBG

420 (LAST CLEAR CHANCE)

Dyer v. Heatwole, 225 Md 507

In this case the plaintiff was leaving a car in which he had been a passenger, caught her coat in the door, and the driver, unaware, drove off, dragging her and causing the injury complained of. Held that she was guilty of contributory negligence in causing the coat to be caught in the door, and this contributed directly and proximately to the accident.

The doctrine of last clear chance was urged but was denied by the Court. The doctrine of last clear chance requires active or constructive knowledge by the defendant of the plaintiff's peril, plus time enough to make an effort to avoid the injury.

425(a) UNAVOIDABLE ACCIDENT

An unavoidable accident is one which could not have been avoided by either the plaintiff or the defendant by the exercise of reasonable care. If either the defendant or plaintiff could have avoided the occurrence by the exercise of reasonable care, it is not unavoidable.

149 Md 281
167 Md 1
165 Md 45
215 Md 398

425(b) UNAVOIDABLE ACCIDENT

You may find that this accident was unavoidable, if you find that it was -

1. An occurrence not to be foreseen and prevented by vigilence, care and attention; and

2. Not occasioned or contributed to in any manner by the act or omission of the defendant (one of the parties).

191 Md 712
191 Md 720
80 Md 36
45 Md 6

If you find that both plaintiff and defendant exercised reasonable care under all the circumstances, but that the accident happened nevertheless because of some condition or circumstance which could not have been avoided by reasonable care, then the accident was unavoidable, and (no one) the defendant is not liable.

220 Md 488

An emergency does not necessarily render an accident unavoidable.

191 Md 114

Mere skidding is not evidence of an unavoidable accident.

191 Md 712

(It is rarely true that an accident is unavoidable).

158 Md 463

(or that a head-on collision is unavoidable).

191 Md 114

JBG

425 (UNAVOIDABLE ACCIDENT)

Passenger Duty

State v. Lupton, 163 Md 180

In this case two cars approached from opposite directions. The car in which the plaintiff was riding made a left turn across the opposite lane and, before it could clear, was struck by the oncoming car. The Court was asked to instruct the jury that if the decedent saw the car approaching, it was his duty to warn the driver of his car of the approaching danger, and if he failed to do so, he was guilty of contributory negligence.

This was held to be in error because there was nothing in the evidence to show any knowledge on the passenger's part that the driver was about to cross in front of the oncoming car, and that it was not a passenger's duty to harass the driver by continual back-seat driving.

JBG

425 (UNAVOIDABLE ACCIDENT)

Shirks v. Oxenham, 204 Md 626

In this case a tractor-trailer veered to the right and struck parked cars. The defendant claims that the driver suddenly became ill just before the collision. There was some evidence, however, indicating that the illness might have begun right after the impact. Plaintiff relied upon res ipsa loquitur, ~~liguitur~~, as the truck was under the exclusive control of the defendant, and the accident would not ordinarily occur with the exercise of due care.

?

JBG

425 (UNAVOIDABLE ACCIDENT)

Lloyd v. Yellow Cab Co., 220 Md 488

Lloyd was a three-year old lad who attempted to follow two older children across the street. The two older children successfully crossed the street, but the plaintiff was struck and injured by the taxicab. The verdict was in favor of the defendant taxi company, and the charge to the jury was challenged because it referred to the term "unavoidable accident" without an adequate explanation to the jury of the legal effect of that term.

The Court held that the charge was sufficient, did not relate to the formal characteristics of an unavoidable accident and required no explanation of that term. The Court paraphrased Judge Cullen's instructions, on page 494, as follows:

> "If you find the infant plaintiff ran or walked in front of the taxicab in the middle of the block, at a time when its operator was free of negligence [that is to say, he was driving at a reasonable rate of speed and obeying the rules of the road], and under circumstances where, with the exercise of ordinary care on the part of the driver of the taxicab, the striking of the infant could not have been avoided, then the plaintiffs are not entitled to recover and your verdict must be for the defendants; but if you find that the taxicab was being operated negligently [in this case the negligence would have had to have been excessive speed and/or a failure to keep a proper lookout; and the court had already explained to the jury that negligence to be compensable must be the proximate cause of the injuries] the defendants cannot escape liability for striking the child by saying the child ran or walked in front of the cab so suddenly that the accident was then unavoidable."

JBG

425 (UNAVOIDABLE ACCIDENT)

Paolini v. Mill Corp., 165 Md 45

Defendant, approaching a street corner from the left, collided with the plaintiff from the right. Case recognizes the right of way of the driver approaching from the right, but points out that this right of way is not absolute but relative, and must be considered in connection with all of the facts and circumstances of the case.

Defendant's prayers offered held to be too indefinite as regards when the plaintiff's auto reached the intersection. Where under the circumstances a collision could be avoided by care on one side or the other, the accident is not unavoidable.

JBG

425 (UNAVOIDABLE ACCIDENT)

State, use of Whittaker, v. Greaves, 191 Md 712

Plaintiff, walking down a mountainside; defendant driving a car descended only part way in second gear, as directed by the road sign. The road was snowy, the defendant slipped sideways, hit and killed the decedent. Judgment below for defendant, reversed by the Court of Appeals. Held that it is an error to give an instruction concerning an unavoidable accident without defining that term. Opinion recognizes an adequate Maryland definition as: "An inevitable occurrence, not to be foreseen and prevented by vigilance, care and attention, and not occasioned or contributed to in any manner by the act or omission of the parties."

JBG

SUGGESTED INSTRUCTION IN RE UNAVOIDABLE ACCIDENT
(No particular case - Hypothetical Question)

The plaintiff in this case seeks to recover a verdict from the defendant on the theory that the injuries complained of, and which you have heard described in the evidence, were caused by negligence on the part of the defendant. By negligence we mean the failure on the part of the defendant to act with due care, that is, the failure to do the things that an ordinarily prudent person would have done under like circumstances.

The defendant insists that the injuries resulted from no fault or negligence on the part of the defendant, and that they were the direct result of an unavoidable accident. We instruct you that an unavoidable accident, so far as this case is concerned, is one which could not have been avoided by the exercise of legally requisite care by any of the persons in this case, plaintiff or defendant. If either the plaintiff or the defendant could have avoided the accident by proper care, it cannot be said to have been unavoidable.

If the failure to exercise proper care resulted from conduct of the defendant, then the plaintiff is entitled to recover. If, on the other hand, it resulted from careless conduct on the part of the plaintiff contributing to the accident, then the plaintiff's right to recover in this case would be defeated by his contributory negligence.

JBG

425 (UNAVOIDABLE ACCIDENT)

Harrison v. Smith, 167 Md 1

In this case a six-year old child ran out into the street at or near an intersection crosswalk, and was injured by the defendant. Defendant claimed the plaintiff ran into his car at a point past the crosswalk. In discussing what constitutes an unavoidable accident, the Court said:

> "An unavoidable accident as the subject of judicial inquiry, is one which could not have been obviated by the exercise of legally requisite care by any of the persons whose responsibility for the occurrence is asserted or denied. If either the plaintiff or the defendant could have averted the accident by proper care, it could not be said to have been unavoidable."

Judgment for the plaintiff was affirmed in this case, the Court holding that the instruction as granted was as favorable to the defendant as he had a right to seek. This was to the effect that if the plaintiff ran into the path of the defendant's automobile when its course could not be arrested, and the child's approach could not have been anticipated, then the verdict should be for the defendant.

430(a) PROXIMATE CAUSE

If you find _____ negligent, you may find him liable if his negligence was a substantial factor in producing the injury.

_____'s negligence need not be the only cause of the injury for you to find him liable. If his negligence combined with some other cause and was a substantial factor in bringing about the damage, _____ may be liable.

If you feel _____ was negligent, but that his negligence was not connected in a substantial way with the injury because of its remoteness or for any other reason, then you may find him not liable.

430(b) PROXIMATE CAUSE

Proximate cause means that cause which is the natural, or probable, order of events,/? produced the injury complained of.

It need not be the only cause, or the last or nearest cause.

It is sufficient if it operates with (concurs with) some other cause (acting at the same time?) at or about the same time, which in combination with it causes (produces) the injury.

JBG

430 (PROXIMATE CAUSE)

Yellow Cab Co. v. Hicks, 224 Md 563

In dealing with the subject of proximate cause, this case held that the proximate cause need not necessarily be the sole cause. It is enough that it be an efficient and contributing cause, without which the injury would not have resulted.

JBG

430 (PROXIMATE CAUSE)

B & O v. State, 169 Md 345

Held error to submit to the jury an instruction which permitted them to consider the mere violation of an ordinance, without showing that the violation caused the injury.

JBG

430 (PROXIMATE CAUSE)

Leslie v. Alexander, 226 Md 635

A passenger on a bus brought suit because she fell to the floor when the bus driver was compelled to suddenly stop his trackless trolley to avoid colliding with a passenger car that had turned to the right from the fast lane of traffic and cut him off. Operator of passenger car held to be at fault in turning from the fast lane for a right turn, without giving any signal of his intention so to do.

JBG

430 (PROXIMATE CAUSE)

Baltimore Transit v. Young, 189 Md 428

Right of emergency transit vehicle recognized over the control rights at a street intersection. Transit vehicle held to be without fault and the proximate cause due to the driver of the plaintiff's vehicle.

JBG

430 (PROXIMATE CAUSE)

Christ v. Wempe, 219 Md 627

Negligence case against the driver of a car involved in a one-car accident in which the car skidded off the road and crashed into two trees. Case was submutted to the jury on special issues and resulted in a verdict for the defendant, which was affirmed on appeal.

Instructions held to be adequate and not erroneous or misleading, although challenged on the ground that the defendant would be liable only if the jury found that his negligence was the direct and proximate cause of the injuries. Recognized that a would have been more accurate, but the entire charge was regarded as fair.

JBG

430 (PROXIMATE CAUSE)

Holler v. Lowery, 174 Md 149

In this case a pedestrian was crossing the highway and then traversed the shoulder thereof, out of harm's way from traffic on the highway, when her progress was blocked by the defendant, who pulled out into the highway in such a fashion as to block her progress and actually to graze her in passing. There she was trapped by his car until another car approached on the wrong side of the road, struck her and crushed her against the defendant's car. She sued both parties, recovering judgments against both, but only the defendant above-described appealed.

It was held that the second driver was not an intervening cause under the circumstances, but that the original negligent conduct of the defendant justified judgment against him. The proximate cause of the accident was held to be the fact of the defendant, and judgment against him was affirmed.

The case cites the American Law Institute's Restatement of Torts, sections 431 and 432. The Restatement uses the mention of "substantial factor" in determining whether the actor's negligent conduct is responsible for the injury. The Court quotes with approval Restatement which recognized the factor as bringing about the injury if it is "substantial."

430 (PROXIMATE CAUSE) Contd.

Suggested instruction:

You are instructed, ladies and gentlemen of the jury, that the injury to the plaintiff in this case is claimed by the plaintiff to be the fault of each of the two defendants. Both are claimed by her to be concurrently responsible for her injuries. Neither of the defendants is liable for the plaintiff's injuries unless he contributed to the happening of the accident which resulted therein, and by this we mean that he is not liable unless his conduct was such that without his participation, the injuries to the plaintiff would not have been sustained. If the conduct of either of the defendants was such that the injury to the plaintiff would not have resulted except for the intervening cause of the other defendant, then, in that event, your verdict should be in favor of the defendant not responsible for the plaintiff's injuries.

JBG

430 (PROXIMATE CAUSE)

Bowman v. Williams, 164 Md 397

In this case the plaintiff asserted a claim for damages by reason of his becoming frightened because defendant's truck ran into plaintiff's basement. Recovery was sustained, if the jury finds ~~that from~~ upon the evidence that the proximate cause of the injuries which he suffered was fear, either for himself or for another.

The jury was instructed:

If you find that the physical damage suffered by the plaintiff was due to a fear for his own safety, or a fear for the safety of another, and such fear was caused by a negligent act or omission of the defendant, then you should find for the plaintiff.

JBG

430 (PROXIMATE CAUSE)

Dallas v. Diegal, 184 Md 372

A two-year old child was hit by a truck backing from a parked position on the wrong side of the street. Resulted in a jury verdict for the plaintiff; judgment n.o.v. for the defendant affirmed. Held that a mere violation of the statute would not afford basis for recovery unless this violation was the proximate cause.

JBG

430 (PROXIMATE CAUSE)

Jones v. Transit Co., 211 Md 423

A passenger on a bus was injured in a sudden stop. Directed verdict for the defendant. The bus was required to suddenly stop when a car suddenly swerved in front of the bus. The speed of the bus held not to be a proximate cause of the injury, for the emergency was caused by the car's pulling in front. Negligence of the car driver was an independent, intervening cause, unexpected and unforeseeable.

JBG

430 (PROXIMATE CAUSE)

Liberto v. Holfeldt, 221 Md 62

Defendant left a car unattended, without removing the keys from the ignition. Five days later a thief drove the car and injured the plaintiff some distance from where the car was stolen. Defendant was sued and recovery was defeated on the ground that the violation of the statute requiring keys to be removed was not the proximate cause of the injury to the plaintiff, which was a negligent act of the driver of the car, to wit: the thief.

JBG

430 (PROXIMATE CAUSE)

Ford v. Bradford, 213 Md 534

Plaintiff collided with the defendant's tractor-trailer, which had stopped on the shoulder of the road because of engine trouble. Plaintiff's vision was impaired by bright lights of oncoming car. The defendant's reflectors were covered with mud. Violation of statute may constitute negligence if it proximately produces the injury.

JBG

430 (PROXIMATE CAUSE)

Maggitti v. Cloverland Farms Dairy, 201 Md 528

A child was hit by an automobile, adjacent to a point in the street where a milk truck had double-parked, allegedly obscuring the view and causing cars to cross the center of the road. The milk truck was excused from liability, because it was not the proximate cause of the accident. There was an intervening cause, to wit the action of the driver of the car. The truck driver could not anticipate that a child, of whose presence in the vicinity he was not aware, would cross where vehicles had the right of way, nor could he anticipate the negligence of the driver of the car. His conduct was not the proximate cause of the accident.

The above case is reported at 201 Md 528, and apparently a second appeal is reported in ~~201~~ 210 Md 11.

JBG

430 (PROXIMATE CAUSE)

State, use of Joyce, v. Hatfield, 197 Md 249

Plaintiff sues defendant, operator of a tavern, claiming that the latter was negligent in selling liquor to an automobile driver who had to use his car for transportation. Judgment for the defendant affirmed, on the ground that the sale of liquor was not the proximate cause of the accident.

JBG

430 (PROXIMATE CAUSE)

Bloom v. Good Humor, 179 Md 384

Bloom was a ten-year-old boy who ran out into the street to do business with an icecream truck. After making a purchase, he started across the street and was there struck by a car.

In a suit against the Good Humor Company, there was a judgment entered on demurrer for the defendant and on appeal the judgment was affirmed.

The Court squarely held that assuming that there was negligence in inducing the lad to come out into the street for service and not safely returning him to the sidewalk, such negligence was not the proximate cause of the injuries, which was due to the lad's carelessly returning to the sidewalk without looking, and to the intervening cause of the car's running him down.

JBG

430 (PROXIMATE CAUSE)

Campbell v. State, 203 Md 338

This case involved a head-on collision, in which the plaintiff claimed that he was on his side of the center line and that the defendant cut across the center line, causing the collision. Judgment for the plaintiff affirmed. Suggested instruction:

Ladies and gentlemen of the jury, the evidence in this case discloses that the two parties, the plaintiff and defendant, respectively, were travelling in opposite directions on the same roadway. The roadway was twenty-four feet wide, an adequate width for both parties to pass safely, provided, of course, that each kept on his respective side of the road. The plaintiff claims that the defendant omitted to do this, crossed over the center line and ran into his car.

You are informed that in addition to the usual requirements with respect to using due and proper care for the safety of persons on the highway, there is a positive and affirmative duty on the part of each of these two drivers to remain safely on his half of the road. The real controversy in the case will be resolved by the determination by you of the question as to which of the parties to this case failed to do so.

JBG

430 (PROXIMATE CAUSE)

Otis Elevator Co. v. LePore, 229 Md 52

A boy's foot was caught in an escalator; construction of the escalator conceded to be negligent, but no direct evidence that the foot was injured because of this defect. Held that the jury could conclude, on circumstantial evidence, that the defect was the proximate cause of the injury. Verdict for the plaintiff was affirmed, because the Court held that if the circumstances of the accident lead to a reasonable probability that there was a relationship of cause and effect between the negligence on the one hand and the injury on the other, the verdict should be allowed to stand.

JBG

430 (PROXIMATE CAUSE)

Walters v. Smith, 222 Md 62

Plaintiff had a pre-existing physical condition. It was claimed that the defendant's negligence activated this condition and caused symptoms for which the plaintiff had to be treated. The trial judge refused to let the case go to the jury, on the ground that there were two equally plausible explanations, for one of which the defendant would be liable and one otherwise. He declined to allow the jury to speculate about it. Held to be error, for the evidence showed reasonable probability that negligence caused the condition complained of.

JBG

430 (PROXIMATE CAUSE)

Cocco v. Lissau, 202 Md 196

A child was hit by an auto on road near beach entrance. Resulted in a verdict for the plaintiff, reversed on appeal. Held that there was no evidence of negligence on the part of the driver. Contended that it was a violation of the traffic statute to drive to the center of the road, rather than drive on the right. Held by the Court of Appeals that violation of this statute was not the proximate cause of the accident, for the boy's chance of being hit was not increased by the presence of the car in the center of the road, rather than on the side.

Pedestrians and vehicles have reciprocal duties to accomodate themselves to each other's lawful use of the road, a duty to drive with the same degree of care as a person of ordinary prudence under similar circumstances.

435 CONCURRING CAUSE

(There may be more than one proximate cause of an injury, and) -

When the effects of wrongful conduct of each of two or more persons actively work at substantially the same time to cause the injury without either being a superseding (intervening) cause, each may be a proximate cause.

Minn. 141

JBG

435 (CONCURRENT CAUSE)

Yellow Cab Co. v. Lacy, 165 Md 588

The plaintiff, a guest in the automobile of another, was injured in a collision with the defendant taxicab. The burden of proof is on the plaintiff to show, by a preponderance of the evidence, that the accident was caused, or contributed to, by the negligence of the defendant. Negligence, to render a person liable, need not be the sole cause of injuries. That is, a guest passenger might recover although his driver was also negligent.

Negligence defined:

> Negligence is a lack of ordinary care--that degree of caution, attention, activity and skill which are habitually employed by, or may reasonably be expected from, persons in the situation of the respective parties under all circumstances surrounding them at the time.

440 INTERVENING (SUPERSEDING) CAUSE

A cause is not a proximate cause if there is an intervening (superseding) cause.

To be an intervening (superseding) cause, all four of the following elements must exist:

1. Its harmful effect must have occurred after the original negligence.

2. It must not have been brought about by the original negligence.

3. It must actively work to bring about the harmful results which would not have followed from the original negligence.

4. It must not have been reasonably foreseeable by the original wrongdoer.

(Note - relation to creation of a "condition" as an "intervening" (superseding) cause).

JBG

445 (VIOLATION OF STATUTE) Last Clear Chance

Legum v. State, 167 Md 339

This is a case of a pedestrian hit in the middle of the street by the defendant; resulted in a verdict for the plaintiff reversed on appeal, because the facts did not justify application of the doctrine of last clear chance. In this case the doctrine of last clear chance was held not to be applicable, because the driver was justified in concluding that the pedestrian would yield the right of way and retire to a place of safety.

Suggested instructions with respect to last clear chance:

Where one has, through an act of his own negligence, placed himself in danger of injury at the hands of another which he is unable to prevent, if the other knows or should know, of his peril in time to avoid injuring him, and he fails to exercise reasonable care to do so, he is guilty of actionable negligence.

Suggested instruction:

A pedestrian crossing a street directly in the path of oncoming traffic is under an obligation to use reasonable care to protect himslef, to discover danger which a reasonable man should have anticipated, and to avoid it whether he be within or without the limits of a crossover. (Question: Is not the pedestrian, like the driver, justified in assuming that when he is in a crossover, the driver will yield the right of way to the pedestrian?)

JBG

445 (VIOLATION OF STATUTE)

Bush v. Mohrlein, 191 Md 410

Plaintiff and defendant collided at an intersection not controlled by a traffic light or signs. Evidence indicated that both cars entered the intersection at approximately the same time.

Suggested instruction:

It is the duty of the driver approaching from the left to yield the right of way to ~~the~~ a vehicle approaching from the right only in those cases where the vehicles are approaching the intersection under such circumstances that a collision is likely to occur. If the vehicle approaching from the left is crossing the intersection at a time when the vehicle approaching from the right is at such a distance from the intersection that there would not reasonably be supposed to be any danger that the two vehicles would collide, then the driver approaching from the left is not required to wait until the vehicle from the right has passed.

JBG

445 (VIOLATION OF STATUTE)

B & O v. State, 169 Md 345

The plaintiff, a passenger in an auto, was killed while the driver was trying to avoid railroad cars being switched on the street and struck a telephone pole. This case holds that the mere violation of a statute or ordinance is not evidence of negligence, unless the violation of the statute or ordinance was the proximate cause of the accident.

This case was reversed because the plaintiff's granted instruction did not require that the accident be caused by the defendants negligence.

JBG

445 (VIOLATION OF STATUTE)

Brown v. Bendix, 187 Md 613

Failure to obey the statutory duty to stop and yield the right of way to a pedestrian who had just alighted from a bus at an intersection is some evidence of negligence.

JBG

445 (VIOLATION OF STATUTE)

Dallas v. Diegal, 184 Md 372

A truck had been parked on the wrong side of the street, in violation of ~~the~~ a statute. The driver undertook to back the truck from its wrongly-parked position and struck a two-year-old child while backing.

Judgment for defendant n.o.v. was granted because it was held that the mere violation of the statute was not the proximate cause of the accident.

JBG

445 (VIOLATION OF STATUTE)

Standard Oil Co. v. Stern, 167 Md 211

Verdict for the plaintiff against the defendant was affirmed, because the evidence clearly showed that the driver of the defendant truck had passed a car on his side of the road when the way ahead was not clear, and when the truck he was passing swerved toward the center of the road, the defendant's truck was forced to veer to the left and collide with the taxicab in which the plaintiff was riding.

JBG

445 (VIOLATION OF STATUTE)

McDonald v. Wolfe, 226 Md 198

In this case the violation of the legal duty constitutes negligence, for it contributed substantially to the happening of the accident. In other words, it was a proximate cause of the accident. The jury was instructed that "If you find no causal connection between the violation of duty on the part of the defendant and the injury, you should disregard the violation and bring in a verdict for the defendant."

JBG

445 (VIOLATION OF STATUTE)

May v. Warnick, 227 Md 77

This case was reversed for error in instructions.

JBG

445 (VIOLATION OF STATUTE)

May v. Warnick, 227 Md 77

Here the Court of Appeals squarely held for the first time that Section 221 of Article 66 1/2, which prohibits one to drive on the left side of the road within a hundred feet of an intersection, does not apply to a one-way street or apparently to the lane of a dual highway. Verdict for the plaintiff was reversed without a new trial.

JBG

445 (VIOLATION OF STATUTE)

Cocco v. Lissau, 202 Md 195

In this case a child was hit by a car on a road near a beach entrance. Judgment for the plaintiff was reversed. Court of Appeals found no negligence on the part of the driver of the car. The defendant was said to have driven to the center of the road, in violation of his statutory duty to drive to the right of the center, but the case was reversed because the violation of the statute was not the proximate cause of the accident. Held that where a child darts in front of a car which is not being operated negligently, and which couldn't avoid the collision, there is no liability.

JBG

445 (VIOLATION OF STATUTE)

Maggitti v. Cloverland Farms Dairy, 201 Md 528

Suit by a child alleged to have been struck by a negligently-operated automobile. Also sued milk truck which had double-parked and allegedly obscured the view and caused cars to cross the center of the road.

It was held that the improper parking of the milk truck was not the proximate cause of the accident, there being an intervening cause, the negligent driving of the car.

445 STATUTE VIOLATION

The law of Maryland provides -

(here read or paraphrase statute)

I instruct you that if you find that Mr. D. violated that statute, and further find that such violation was a proximate cause of the accident, then Mr. D. was guilty of negligence; and you should so find.

If, however, the violation of the statute was not a proximate cause of the accident, then the violation is immaterial, and you should disregard it.

(Example - Driving at excessive speed. Violation - not having registration card for car in possession).

450 WHAT IS NOT THE DUTY OF MOTORIST

Some testimony has been introduced in this case respecting _____ _____ _____. I instruct you that it is not the duty of a motorist to:

1. To anticipate that another vehicle will violate a statutory duty, in the absence of some indication to the contrary.

2. Anticipate that another motorist will not yield the right-of-way when it is his duty to do so.

3. To look to see whether vehicles facing a red light may be about to cross in violation of the red light.

225 Md 112
184 Md 499

4. That a person will leave a place of safety to enter a place of danger.

5. That a child will unexpectantly or suddenly run into a roadway in front of a moving vehicle.

6. That another motorist will suddenly cross a street from his proper lane into the wrong lane of traffic.

190 Md 1

7. To warn a vehicle behind him that he intends to pass a car ahead of him.

167 Md 658

8. To anticipate that an overtaking vehicle will pass on his left within 100 feet of an intersection in violation of the statute.

216 Md 165

9. To anticipate that another person will act in an unreasonable manner, in the absence of some indication to the contrary.

212 Md 471

JBG

450 (NOT DUTY OF MOTORIST)

Caryl v. Baltimore Transit, 190 Md 162

In this case a pedestrian was crossing Charles Street on a green light and was struck by a streetcar turning left into Charles to go south thereon. This decision recognizes that since the Act of 1943, a pedestrian or vehicle lawfully within an intersection, including one crossing on a favorable light, has the right to complete the trip, even if the light changes in the middle of the trip.

This case further recognizes that a vehicle making a left turn must wait until those meeting it have passed, and must not cross in front of vehicular or pedestrian traffic headed in the opposite direction.

The case also recognizes that a pedestrian has the right of way over a streetcar at a controlled intersection. The Court also commented that a pedestrian cannot legally be required to look simultaneously in three different directions.

Suggested instruction:

You are instructed that a pedestrian lawfully within an intersection, as where one has a favorable light, has the right to complete the trip, even though the light changes in the middle thereof. You are further instructed that a vehicle making a left turn must wait until those persons or vehicles proceeding in the opposite direction have passed, rather than to cross in front of such traffic.

JBG

450 (WHAT IS NOT THE DUTY OF A MOTORIST)

Hensley v. Pirzchalski, 212 Md 471

In this case, the plaintiff, a Good Samaritan, had sought to help the defendant start the latter's car, which was stalled on a slight up-grade. In attempting to back the car, the defendant had steered it in such a manner that it injured the plaintiff.

The case was taken from the jury on the ground that there was no primary negligence, and affirmed on appeal. Held that the plaintiff should have anticipated that the defendant would back his car into an adjacent alley, in order to push it forward down-grade.

502 MANAGEMENT AND CONTROL

The law requires a motorist to have his car, at all times, under control. This means that he must be prepared to stop, slow, turn, yield the right-of-way, or take such other measures to avoid danger as are reasonable under all the circumstances. Failure to do so is negligent.

In this case, Mr. _____is charged with having driven (so fast) (on the wrong side of the road) (without proper brakes) (with defective steering gear) - so that he could not control his car sufficiently to avoid the accident.

It is for you to say whether or not Mr. _____was negligent.

184 MD 634

503 DRIVER'S MANUAL

No Cases.

No Official Driver's Manual in Maryland.

504 LIMITED SKILL OF DRIVER

No cases in Maryland.

There must be many cases in other States of persons with defective eyesight, hearing, disabled veterans, heart disease, etc., indicating when a person is negligent, if with limited skill, undertakes to drive.

505 RIGHT - OF - WAY

a. Definition

Right-of-way means the right to the immediate use of the highway.

b. Nature

The right-of-way rule is a cautionary guide, not a peremptory command.

190 Md 128

c. The right-of-way rule does not mean that a person with the right-of-way does not have to take reasonable precautions for his own and others' safety.

226 Md 221

A driver who has the right-of-way at an intersection has the right to proceed across if he sees no obstacles in the intersection.

225 Md 112

A driver who has the right-of-way may assume that an unfavored driver or an unfavored pedestrian will yield the right-of-way to him until he discovers that the unfavored person does not intend to do so.

190 Md 128

507 CLEARING INTERSECTION

If a vehicle enters an intersection on a green light, it has the right-of-way to continue through the intersection and complete its trip across.

190 Md 162

This right-of-way continues, and is superior to, the right-of-way of another vehicle which entered the intersection on a green light.

190 Md 528

508 MAINTENANCE IN SAFE CONDITION

It is for you to say whether or not Mr. D used reasonable care in maintaining his vehicle as to:

a. Brakes

b. Lights

c. Steering gear

d. Accessories

e. Wheels

f. _____

If he did not, and as a result Mr. P was injured, then Mr. D was negligent and you should find him liable.

If, on the other hand, the accident was caused by a hidden or latent defect which Mr. D could not reasonably have known, then Mr. D is not liable.

a. Parking Off Roadway

The law requires that a disabled vehicle (truck) must be parked off the travelled part of the highway when it is practicable, leaving at least 12 feet of open road to its left.

It is for you to say whether, ~~in~~ under the circumstances of this case, it was practicable for Mr. D's truck to be parked further to the right.

If it was practicable, then Mr. D was negligent, but if it was not, then Mr. D had the right to park as he did.

511 DISABLED VEHICLES

b. The driver of a disabled vehicle is not bound to remain with his vehicle in order to give any signals other than the flares, reflectors, or _____, required by the law (statute).

194 Md 81

512 SEAT BELTS

No cases in Maryland.

Recent Statute (1964?) requires seat belts in new car sales under certain circumstances.

515 LIGHTS

a. Darkness

It is for you to say whether, at the time of the accident, it was dark enough for a prudent driver to have had his headlights burning.

221 Md 7

b. Headlights

The law requires motor vehicles to have headlights which will enable the driver to see objects in the road at a distance of _____ feet. It is for you to say whether or not Mr. D's headlights complied with this requirement.

Art 66 1/2 sec.__

c. High and Low Beam

d. Blinding and Dazzling Lights

Of approaching vehicle.

e. Rear Lights

f. Parking Lights

A parked vehicle is not required to have lights on its rear under all circumstances, but it is negligent to park a vehicle, without lights, in such a manner as to endanger other persons.

It is for you to say whether, under the circumstances of this case, Mr. D was negligent in failing to have parking lights burning on the rear of his car.

517 FLARES - REFLECTORS

The law requires that the driver of a vehicle (truck) parked at night on or near a highway, place flares behind and beside to warn of the trucks' presence.

Failure to place such flares is negligent.

Failure to have such flares available in the truck is negligent.

In the case of a truck carrying inflammable goods, reflectors may be used instead of flares.

Failure to place flares in the manner or at the distance required by statute constitutes negligence, if that failure caused or contributed to the accident.

194 Md 81

525 CHAINS

Failure to use chains on ice, snowy or slippery roads is negligent, if an ordinary prudent driver would have used them (under all the circumstances).

229 Md 155

530 SNOW TIRES

Failure to use snow tires on ice or snowy (or slippery) roads is negligent if an ordinary prudent driver would have used them (under all the circumstances).

229 Md 155

535 ADAPTATION TO CONDITIONS

A motorist is bound to observe and take account of conditions of road, weather, density of traffic, persons on or near the highway and other circumstances; and when danger is caused by any of them, to use a higher degree of care, measured by the extent of the danger.

218 Md 627
168 Md 306

537 LOW GEAR ON HILLS

Failure of a driver to go into low gear in descending a hill is negligent if an ordinary prudent driver would have done so (under all the circumstances).

229 Md 155

550 EMERGENCIES

In determining whether a person's act or failure to act constitutes negligence, you may take into consideration the fact that he was confronted with an emergency.

The existence of an emergency may be an excuse for what would otherwise be negligence.

194 Md 666

If _____ reacted to the emergency as a reasonable prudent person might have reacted, you may not find him negligent even if his choice of action was not the best one.

205 Md 137
217 Md 433

558 SPEED

It is negligence for a motorist to drive above the lawful speed limit, or at any speed which, considering the traffic and weather conditions, the proximity of children, or any other circumstance existing at the time is not reasonable. (Follow by proximate cause instructions).

559 LANES OF TRAFFIC

The law provides that a motorist must ordinarily drive on the right side of the road, and in the absence of good reasoning, failure to do so is negligent.

170 Md 229

JBG #7 - THIS IS A COLLISION OCCURRING AFTER DARK ON THE XYZ HIGHWAY, A TWENTY-FOUR-FOOT ROADWAY RUNNING NORTH AND SOUTH. MR. PLAINTIFF WAS SOUTH-BOUND; MR. DEFENDANT WAS NORTH-BOUND; THEY COLLIDED NEAR THE CENTER OF THE ROAD IN A SIDE-SWIPING ACCIDENT, THE LEFT SIDE OF THE NORTH-BOUND CAR HAVING COLLIDED WITH THE LEFT SIDE OF THE SOUTH-BOUND CAR. BOTH CARS WERE SEVERELY DAMAGED, AND THE RESPECTIVE DRIVERS RECEIVED PERSONAL INJURIES. THE PLAINTIFF, WHO WAS OPERATING THE SOUTH-BOUND CAR, SUED THE DEFENDANT, WHO WAS OPERATING THE NORTH-BOUND CAR, AND THE LATTER FILED A COUNTER-CLAIM AGAINST THE FORMER.

Ladies and gentlemen of the jury:

The collision in this case occurred on a straight section of the road of adequate width for two cars to safely pass. It seems a fair inference from the testimony in the case that one of the drivers crossed over the center line, for if both of them had remained entirely on his respective side of the road, they would have passed each other unhurt. However, there was no center line marked on the road, and the testimony is sharply in conflict as to where the point of impact was with respect to the imaginary center line. Each of the parties claims that he was entirely on his side of the road, and there is some testimony in the case to substantiate the respective claims of each of the parties in this regard.

This presents a disputed question of fact which you are called upon to resolve. While the Court will outline the testimony favoring each of the respective parties, you will understand that this is done only for the purpose of assisting you in evaluating the testimony, and that it is your responsibility to determine these essential facts, for you must weigh the evidence and determine the credibility of the witnesses who have testified.

The defendant testified that the plaintiff approached him with his lights on "high beam," and that he found it difficult to see through and beyond these lights, but that he carefully steered his car to the

right of the approaching headlights, so as to safely pass the oncoming car. The plaintiff denies that his headlights were on "high beam," but states that he had depressed them to "low beam" at the time he saw the defendant's car round the curve, some quarter of a mile away.

You will take into account the testimony of the officer who reached the scene of the collision shortly after it occurred. Admittedly he did not see the collision, but he studied the scene in the presence of both parties; and you will take into account the tire marks on the road as described by him, as well as the location of the debris as located by this witness, as well as certain gouge marks described by him, if you find that these gouge marks were made by the defendant's car.

The Court instructs you as a matter of law--and you are required to follow the Court's instructions concerning matters of law-- that two automobiles approaching each other on a two-lane road are required to be alert to observe the conditions of the highway, and to stay on their respective sides of the center of the highway, whether that center is marked on the roadway or not. You are also instructed that when two cars are approaching each other during the nighttime, the driver of each is required to dim his headlights so that the oncoming driver may not be blinded by a "high" light. (The Court instructs you that) the burden of proof in this case, so far as the plaintiff's claim is concerned, is on the plaintiff, to convince you by a fair preponderance of the testimony that he is entitled to recover.

The defendant in this case claims that irrespective of on which side of the center line the collision occurred, the plaintiff in this case is barred from recovery because the plaintiff was guilty of negligence which contributed to the happening of the collision. This claim

is based upon the defendant's contention, which the plaintiff denies, that the plaintiff was operating his car on "high beam" headlights, and that the effect thereof was to blind the defendant, which may have caused him to lose his position on the highway.

The Court instructs you that if you find that the plaintiff was driving his car on the "high beam," notwithstanding his contention to the contrary, and that this fact contributed to the happening of the collision of these cars, then his right of recovery in this case should be denied. However, the burden of proving this contributory negligence is upon the defendant, so that in order to defeat the claim on this ground, the defendant must convince you by a fair preponderance of the testimony that the plaintiff was operating his car on "high beam" lights, and that this contributed to the happening of the accident.

If your verdict in this case is for the plaintiff, then, in determining the amount of your verdict, you may take into consideration the following: (Details of the plaintiff's claim as established by the evidence).

566 DRIVERS' SIGNALS

There are some occasions when it is the duty of the driver to give other persons on the highway a signal of his intentions:

1. A person starting a vehicle which has been stopped, standing or parked must first give a hand signal to oncoming traffic.

2. A person turning from a direct course on a highway must give a signal to any vehicle which might be affected at least one hundred feet before making the turn.

3. A person stopping or slowing must give a signal to any vehicle which may be affected by such action.

In each case, the signal must be an appropriate one. The circumstances determine what kind of signal is appropriate (that is, by hand, directional signal, stop lights, or sounding of horn) and the length of time for which it must be given. It is for you to decide, considering the circumstances of this case, whether _____ gave a reasonably adequate signal of his intentions.

575(a) ORDINARY INTERSECTIONS

The fact that drivers are approaching an intersection is a circumstance to consider in determining whether or not they are driving negligently. We all know that the amount of danger to one in a car is greater at an intersection than elsewhere, and the amount of caution required, therefore is greater. In this case, the accident occurred at an intersection which was not controlled by a traffic light, stop sign or other device.

1. The general rule is that, at such an intersection, when two cars are approaching so as to arrive at about the same time, the car approaching on the right is entitled to the right-of-way. The driver of the car approaching on the left must wait until he can cross with safety.

2. The car on the right in this case had the right-of-way if you find that it arrived at the intersection before or at the same time as the car approaching on the left. The car on the right also had the right-of-way if it arrived so soon after the car on

the left arrived that if both had continued through at the same time, at the same rate of speed as they had been travelling, collision in the intersection would have occurred.

3. If, considering the speed of the cars, the width of the intersection, and the relative positions of the cars, you find that the driver of the car on the left was reasonable in assuming that he could safely have crossed the intersection first without danger of collision with the car on the right, then you may find that the car on the left had the right-of-way.

4. Both drivers were obliged to drive with due care.

A. You may find the driver not having the right-of-way negligent for failing to yield to the driver having it.

B. You may find that the driver having the right-of-way was negligent if he saw or should have seen that an accident was likely to occur if he proceeded across the intersection, and he nevertheless proceeded to cross.

575(b) INTERSECTION - RIGHT-OF-WAY

The law of Maryland provides that (Art 66 1/2 s. 231) all vehicles shall have the right-of-way over other vehicles approaching at intersecting public roads from the left, and shall give the right-of-way to those approaching from the right.

This law applies to vehicles approaching an intersection so as to arrive thereat or about the same time.

If, therefore, the driver of an unfavored vehicle, sees a favored vehicle so far away that, if driven with reasonable speed, it would not arrive at the intersection at or about the same time as the favored vehicle, then the unfavored vehicle is not required to give the right-of-way to the favored vehicle.

It is the duty of the unfavored driver to use reasonable care to see vehicles on an intersecting road, to judge their speed, their distance away, and to determine whether they will arrive at or about the same time. Failure to use such care constitutes negligence.

There is also a duty of the driver of the favored vehicle to use ordinary care in approaching and driving into or through an intersection, and his failure to do so constitutes negligence.

525

JBG #5 - CLAIM FOR PROPERTY DAMAGE AND PERSONAL INJURY FROM A COLLISION OCCURRING IN THE OPEN COUNTRY AT AN UNCONTROLLED INTERSECTION

Mr. Foreman and members of the jury:

The facts in this case are quite simple, although seriously disputed by the two sides who have been heard by you. It is your responsibility to evaluate this testimony and to decide what the true facts are. You must weigh the evidence and determine the credibility of the witnesses whom you have heard and decide what really happened in connection with the episode in which the plaintiff claims to have been injured. Anything the Court may say concerning the facts will be advisory only, and we will refer to the facts chiefly for the purpose of bringing clearly into focus the factual problems which you are called upon to solve.

There are some principles of law which you must know about, and the Court will instruct you concerning these. You are bound by what the Court says concerning the principles of law which were involved, but primarily ~~that~~ This is a question of fact and your determination controls.

The collision referred to in this case occurred in the open country at an intersection of what is known as the Johnstown Road, which runs roughly East and West, with the Barstow Road, which runs approximately North and South. The intersection of these two roads is not controlled by any signal or other device, and there is no stop sign against traffic on either of these roads.

~~The~~ Mr. Plaintiff was driving East on the Johnstown Road, and approached this intersection from the West. The car operated by ~~the~~ Mr. Defendant was driving South on the Barstow Road, and approached the intersection from the North. In this situation, ~~the~~ Mr. Plaintiff was on ~~the~~ Mr. defendant's right and, under the law of Maryland, was given the right of way, because the statute controlling this situation provides that the car on the

11 →

right at an uncontrolled intersection has the right of way over the car on its left.

The defense in this case is that the Mr. Defendant, on approaching the intersection, looked both ways and could see no approaching traffic on the Johnstown Road, but that before he could cross the intersection, the Mr. plaintiff's car appeared around the curve in the Johnstown Road at a speed which was greater than was reasonable and proper under the circumstances and which made it impossible for the Mr. Defendant to avoid the collision.

The Court instructs you, as a matter of law, that ordinarily speed on the part of the driver of a favored car, that is, a car which has the right of way under the circumstances of the particular case, is not relevant, because regardless of speed, the favored car has the right of way. However, if the speed of the Mr. plaintiff's car was so great as to deny the Mr. defendant an opportunity to see him in time to yield the right of way to him, and if that speed was in excess of the speed limit established for that roadway, or if it was greater than was reasonable and proper under all of the circumstances, such speed may be found by you to be contributory negligence on the part of the plaintiff in this case and defeat any right of recovery he might otherwise have.

With respect to the question of primary negligence, that is, whether the Mr. defendant in this case failed to exercise due and proper care in the operation of his automobile, the burden of proof is on the Mr. plaintiff, to satisfy you by a fair preponderance of the evidence that your answer should be in the affirmative on this issue. However, on the issue of contributory negligence, that is, whether the Mr. plaintiff exercised due and proper care in the operation of his automobile, and that, if he

failed to do so, this contributed toward the happening of the collision in which he was hurt, the burden is on the defendant to show by a fair preponderance of the testimony that the plaintiff was guilty of contributory negligence, and that this contributed toward the happening of the collision.

If you find your verdict in this case for the plaintiff, you are entitled to take into account, and to allow him compensation for, the following items of his claim:/ he claims that his automobile was a total wreck, except for small salvage value, and Counsel have agreed that his loss in this respect was $750.00, which is the amount which you should allow with respect to this element of the plaintiff's claim if your verdict is in his favor; 2. He claims that he had compound fracture of the right leg and was required to incur hospital bills in the amount of $550.00 because thereof. If you find that this is a reasonable charge for these hospital services, this amount may be allowed by you. 3. He has presented the bills of two doctors, and if you regard their charges as proper and reasonable under the circumstances, you may allow such sum as will reimburse the plaintiff for such part or all of these bills. 4. He also was employed at the time of this accident, and the testimony indicates that he was unable to return to his job for eight weeks. If you find this to be true, you may allow him such sum as will compensate him for his lost earnings. 5. You are also entitled to consider the pain and suffering to which he was subjected by reason of the injuries described in the evidence. The Court can give you no yardstick by which you can measure pain and suffering, but you are directed to use your practical common sense in an effort to arrive at a sum which will be fair, both to the plaintiff and to the defendant, concerning an allowance for the pain and suffering which he underwent endured.

578 DUAL HIGHWAY

I instruct you that:

For the purposes of traffic regulation by automatic light, a dual highway, consisting of two roadways, divided by a median strip (up to 18 feet wide) is regarded as a single roadway, and persons or vehicles starting to cross it on a green light have the right to complete the crossing of the entire highway, and not merely to the median strip.

206 Md 407

578 A White B Brown C Green D Black

JBG #6 - INSTRUCTIONS IN A CASE SUBMITTED TO THE JURY ON SPECIAL ISSUES BECAUSE OF CONFLICTING CLAIMS AMONG THE SEVERAL DEFENDANTS.

This suit grows out of a four-car collision. Plaintiff A Mr. White was driving East on the dual highway when defendant B Mr. Brown approached the dual highway from the North on Stoneleigh Road, an unfavored road, and collided with the West-bound car on the dual highway, and that car, driven by Defendant C Green, crossed the median strip and struck the Plaintiff's car in a head-on collision. Defendant D Black was driving East on the dual highway, following Plaintiff A, and ran into the rear of A White's car after it had collided head-on with Defendant C Green's car. The Defendant D Black has filed a cross-claim against the Plaintiff A White, Defendants B Brown and C Green. Defendant C Green has filed a cross-claim against Defendant B Brown.

After the usual cautionary instruction and concerning the burden of proof to the jury, the instruction should continue to this effect:

In view of the fact that this case is complicated by a four-car collision in which various persons involved have claims and counter-claims against each other, the Court has concluded that the case will be submitted to you on what we call "special issues," rather than to ask you to resolve the case by general verdicts. This means that the Court will propound to you certain specific questions of fact which we ask you to answer. These questions are listed on a sheet of paper, and the Foreman is requested to write on this sheet your answers to the several questions as you arrive at your answers. We are sure you will find this to be much simpler than to try to resolve the case by a series of general verdicts. These questions are as follows:

(1) Was the Defendant B Brown guilty of negligence in the operation of his car which was a proximate cause of the collision between the car of Defendant C Green and the car of the Plaintiff? White?

Answer Yes or No.

JBG #6 (Contd.)

(2) Was the Defendant C (Green) guilty of negligence which caused his car to collide with that of Plaintiff A (White)? Answer Yes or No.

(3) Was the Defendant D (Black) guilty of negligence which contributed to the collision between his car and that of Plaintiff A (White)? Answer Yes or No?

(4) Was the Plaintiff A (White) guilty of any negligence which contributed to the collision between his car and that of Defendant D? Answer Yes or No.

(5) Were any of the injuries sustained by the Plaintiff (White) received in the collision of the Plaintiff's (White) car with that of Defendant B (Brown)? Answer Yes or No.

(6) Were any of the injuries received by the Plaintiff (White) received in the collision between the car of the Plaintiff (White) and that of Defendant D (Black)? Answer Yes or No.

(7) What sum would be fair compensation to the Plaintiff (White) with respect to all of the injuries sustained by him in the collisions described in the evidence? $_____.

(8) Of this sum, how much of the damages, in dollars, is the result of the injuries sustained in the initial collision between the car of A (White) and the car of C (Green)? $_____.

You will understand that the law of the State requires that all persons using the highway are required to exercise due care in the control and management of their respective vehicles, that is, the care and caution which a reasonably prudent person would have exercised under like circumstances. In addition to this general rule, we instruct you that the undisputed evidence in this case shows that there was a

stop sign against the Stoneleigh Road on which the Defendant B was approaching the dual highway. Under these circumstances, it was his duty to stop before entering the West-bound lane of the dual highway and to yield the right of way to traffic approaching thereon. If you find that he failed to stop or that he failed to observe the car of the Defendant C approaching on the dual highway, you are justified in inferring negligence on his part.

The Court instructs you that the uncontradicted testimony in this case discloses that the speed limit on the dual highway was sixty miles per hour. If you find that either Defendant C or Defendant D was driving his car at a speed in excess of sixty miles per hour, and that the happening of the collision in which their respective cars were involved was contributed to by such excessive speed, you may find that they were respectively guilty of negligence contributing to the collision in which their respective cars were involved.

With respect to the collision between the car operated by the Defendant D and that of the Plaintiff A, you are instructed specifically that the driver of a car following another is required to keep a sufficient distance between his car and the car ahead of him to enable him to stop his car, or to turn aside, and thus avoid a collision in the event an emergency should occur. The law does not set up a specific distance, but the interval is that which an ordinarily prudent person would maintain under like circumstances, giving consideration to the type of pavement, conditions of light, whether the pavement is wet or dry, and--most important of all--the speed at which the respective cars are travelling. If you find that the Defendant D failed to keep a sufficient interval between his car and that of the Plaintiff A, or that he was travelling

JBG #6 (Contd.)

at a speed greater than was reasonable and proper under the circumstances, you would be justified in finding that the Defendant D was negligent in connection with the collision in which his car was involved. If, on the other hand, he maintained a proper interval, between his car and that of the Plaintiff A so that he could have brought his car to a stop, or otherwise have avoided the collision under ordinary circumstances, but that the collision between his car and that of the Plaintiff A was due entirely to the fact that the progress of the Plaintiff's car was suddenly and without warning arrested by the head-on collision with the car of D, then you would be justified in finding that so far as D is concerned, the accident was unavoidable.

579 BOULEVARD INTERSECTION

The law requires that the driver of a vehicle approaching a stop sign at a boulevard shall both (1) come to a full stop, and (2) yield the right-of-way to a vehicle on an intersecting highway.

Failure to do either by the driver on the unfavored highway constitutes negligence, and if such failure contributed substantially to an accident with a car on the favored highway, you should find the driver who violated the rule negligent.

(225/339)
(226/198)

a. Basic Duty -

The law requires that the driver of a vehicle approaching a stop sign at a boulevard shall both (1) come to a full stop, and (2) yield the right-of-way to a vehicle on an intersecting highway.

Failure to do either by the driver on the unfavored highway constitutes negligence, and if such failure contributed substantially to an accident with a car on the favored highway, you should find the driver who violated the rule negligent.

(225/339)
(226/198)

b. Excessive Speed or Position of Favored Vehicle -

An unfavored driver who enters a boulevard without giving the right-of-way to a vehicle on the boulevard is not excused by:

(1) Excessive speed of the vehicle on the boulevard.

(225/526)
(187/174)
(229/159)
(217/84)
(165/32)

(2) The fact that the vehicle on the boulevard was on the wrong side of the road, or in the wrong lane.

(225/526)
(209/526)

c. Stop Sign and Red Light Same -

The effects of a stop sign and a red traffic light are the same with respect to duties under the boulevard law.

(225/112)

d. Slow Sign -

A slow sign on a boulevard does not affect the right-of-way of a vehicle on the boulevard.

(187/174)

e. Extent of Intersection -

The duty of a driver entering a boulevard to yield the right-of-way to vehicles on the boulevard is not confined to the exact confines of the intersection, but extends also until he has entered the proper lane and attained a speed which does not interfere with traffic on the boulevard, or until he has gotten all the way across the boulevard.

(226/198)
(215/43)
(211/568)

f. Divided or Dual Highway -

A divided highway (dual highway) is a single roadway, and a highway crossing it creates a single intersection, entitling any vehicle which enters it on a green light to complete its crossing of both traffic lanes.

(206/407)

g. Necessity of Stop Sign -

To constitute a boulevard, a stop sign must be erected.

(197/130)

h. Turning Into Wrong Lane -

Turning into a wrong lane of a boulevard, and causing a head-on collision constitutes a failure to give the right-of-way.

(226/198)

i. Blocking Intersection -

Blocking of boulevard intersection by a tractor-trailer entering the boulevard is a failure to give the right-of-way and negligent.

(226/198)

j. Bicyclist - Animal Drawn Vehicles -

The duty of a bicyclist, or the driver of an animal drawn vehicle, to obey a boulevard stop sign is the same as that of a motorist.

(229/59)
(211/568)

k. Pedestrian -

A pedestrian is not bound to obey a stop sign.
(228/73)

l. Contributory Negligence of Favored Driver -

The driver of a vehicle on a boulevard may be contributorily negligent -

(1) By failing to avail himself of the last clear chance to avoid the accident.
(186/218)

(2) By failing to see a large object such as a tractor-trailer blocking the roadway, or a passenger car 1/3 block away.
(225/339)
(226/198)

(3) A driver who collides with another because of a defective light at an intersection which showed green for both vehicles is not negligent.
(202/253)

580

JBG #1 - RIGHT-ANGLE COLLISION AT INTERSECTION, CONTROLLED BY AUTOMATIC SIGNAL

Mr. Foreman, ladies and gentlemen of the jury:

The testimony in this case has now been completed and the next order of business is for the Court to instruct you with respect to the law in this case and your duties in connection with its final disposition.

There are some principles of law which you must know about, but primarily this case is a question of fact which you must resolve. The facts are peculiarly your responsibility, and the Court will refer to them only for the purpose of bringing clearly into focus the factual problems which you must resolve. You must determine the weight of the evidence which you have heard, and the credibility of the witnesses who have testified. i.e. which of the stories told by the witnesses you believe to be the truth (or to be more probable).

In the first place, the Court wants to inform you that the burden of proof in this case is upon the plaintiff, Mr. P, and the plaintiff, in order to be entitled to recover, must convince you that the facts in the case are as claimed by ~~the plaintiff~~ him. If, after hearing the evidence and this discussion of the case by the Court, and the argument of Counsel, which you will hear in a few ~~minutes~~ moments, you are not convinced by a fair preponderance of the evidence that the plaintiff is entitled to recover, then, in that event, your verdict in the case should be for the defendant, Mr. D, because that would mean that the plaintiff had not met the burden of convincing you by a fair preponderance of the evidence that the plaintiff is entitled to recover.

This case involves an automobile collision which occurred at two intersecting streets or roads, viz. 10th St. and Avenue B in ___ City. This intersection was controlled by traffic

lights, which we will discuss in a few moments. We want to say first, however, that all persons who use the highway are required to use due and proper care. That is to say that each of the persons using the highway is bound to use, for his own safety and that of others, the care and prudence in connection with the operation of his automobile which an ordinarily prudent person would have used under like circumstances, and the failure to use that care might result in negligence on the part of the person concerned and make him liable for mishaps to others. In addition to this general rule, there is a provision in the Maryland law for the installation by the proper authorities of traffic control signals at (busy) intersections. There was such a traffic control at this intersection at the time of the collision referred to in the evidence. The parties have agreed that at the time of the occurrence, this traffic signal was operating properly; that is to say, when the light was green with respect to traffic on ~~one road~~ Route 95, it was red with respect to the traffic on ~~the other~~ Avenue B, and ~~intersecting road~~ vice versa.

There is a sharp conflict in the testimony as to which of the lights was red, denying passage to traffic on that road, and which from had the green or "go" signal. This is a conflict in the testimony which you must resolve, and you are directed to weigh all of the evidence carefully and to reach your determination based upon what you conceive to be the preponderance of the testimony in the case. The only qualification or addition the Court feels it necessary to make is to point out to you that just before a light turns from green to red, there is a cycle of amber light, or "caution" light, to warn incoming drivers that their signal is about to turn against them. The amber light shows on each street with the green light and ~~it~~ it ___ seconds. If a driver enters the intersection on the green light, he is entitled to go through the intersection and be out of harm's way before the traffic on the intersecting

at the end of the period during which the green light is

JBG #1 (Contd.)

What about approach and entering after light turns amber? 1. alone 2. with green.

road is justified in entering the intersection.

If your verdict in this case is for the plaintiff, you are entitled, in determining the amount of the damages to be awarded to Mr. P. him, to take into account the plaintiff's out-of-pocket expenses, including repairs to his automobile, hospital bills, doctors' bills and any other expenses which he may have established to your satisfaction by the evidence. The parties have agreed on the amount of certain items, viz. the doctor bill in the amount of $; the hospital bill in the amount of $, and . You may also give consideration to allowing him such sum as will fairly compensate him for his pain and suffering incident to his convalescence from the injuries sustained in the collision referred to in the evidence. There is no precise measure in dollars for the value of pain and suffering, and you must simply use your common sense and experience in determining what is a reasonable sum. If you find the plaintiff sustained a loss of earnings during his convalescence, you are entitled to allow him such sum as will reimburse him for this loss of earnings.

There is evidence in the case tending to show that the plaintiff sustained some scarring about the face, which will be in the nature of a permanent condition, and he has sustained a limp in one of his legs which the doctor described as probably permanent. You will recall that the doctor's testimony was that the leg had reached its maximum recovery, and that in his opinion the limp which was described by the witness and by the plaintiff, and perhaps observed by you, will continue to be a permanent condition. If you find that to be true, you are entitled to award also to the plaintiff such sum as will fairly compensate him for this permanent injury.

This does not mean that Mr. D. admits liability for these bills, but only that there is no dispute as to their amount if he is liable.

585 - 587 OBSTRUCTIONS

I instruct you that when a driver's vision is obscured for any reason, it is his duty to take such precautions as are reasonable to discover whether the way is clear to avoid injury to any person.

Such precautions include stopping, slowing, sounding warning signals, or otherwise. until the obstruction clears,

This duty applies to obstructions to vision by any means, whether on or off the highway, including:

a.	fog	h.	foliage
b.	snow	i.	poles
c.	rain	j.	glare from approaching vehicles
d.	darkness	k.	vehicles, parked
e.	dust	l.	vehicles, moving
f.	trees	m.	construction works or materials
g.	shrubbery	n.	any other means

It is for you to say whether _____ did or did not take such precautions.

229 Md 59
225 Md 278
227 Md 526, 531
219 Md 413
213 Md 534
195 Md 241
171 Md 77
166 Md 217
162 Md 549
140 Md 673
228 " 230
225 · 526
214 " 463

Note - Driving at 30 - 40 mph toward lights of an oncoming vehicle is not negligence per se.

162 Md 209

A person approaching an obstruction in his own lane is not required to yield the right-of-way in his own lane.

227 Md 531

A driver of a disabled truck is not required to remain with the truck, and may leave it for 45 minutes to obtain help, if he has put out flares or reflectors as required by statute.

194 Md 81

Obstruction of view requires particular caution

228 Md 230

630 TRACTOR-TRAILERS

One circumstance you must consider in determining the amount of care required is the nature of the vehicle being driven.

If _____was operating a tractor-trailer, he should exercise more care than if he were driving a smaller vehicle. This is because of the greater potential danger arising from the use of such heavy and unwieldy vehicles.

211 Md 504
223 Md 362
195 Md 525
202 Md 32

640 EMERGENCY VEHICLES

One circumstance you must consider in determining the amount of care required of any person is the nature of the vehicle being driven.

In this case _____ was driving an authorized emergency vehicle responding to an emergency call.

(If there is a conflict about whether he was responding to an emergency call; _____was responding to an emergency call if he had reasonable grounds to believe that there was an emergency to which he should respond in his line of duty).

In such a situation, we can all recognize the need for prompt and unusual action.

189 Md 428

In such a situation, a driver is not bound to observe the ordinary rules of the road as to speed, right-of-way, traffic signals, etc.

226 Md 363

However, it is still the drivers duty -

1. To warn the public by bell (siren, or exhaust whistle).

2. To slow down and proceed cautiously if he goes through a traffic signal.

3. To drive with due care for the safety of other persons. In determining what is due care you must consider the nature and urgency of the emergency and all other circumstances.

219 Md 75

655 COMMON CARRIERS

The operator of a (bus, taxi, street car, etc.) owes to its passengers the duty to exercise the highest degree of care for their safety consistent with its practical operation as a carrier of passengers.

185 Md 85
183 Md 557

This duty exists while the passenger is entering and leaving the vehicle as well as during the journey.

224 Md 242
183 Md 557

Although this places on the driver a higher duty of care than is borne by the ordinary motorist, it does not mean that the (bus, taxi, street car, etc., company) will be responsible for any injury that occurs to a passenger. There must be some fault on the part of the company or its agent to justify imposing liability.

211 Md 529
222 Md 433

710 PEDESTRIANS

The law gives the right-of-way to pedestrians at street crossings and to motor vehicles between crossings.

a. Basic Duties -

(1) The law gives the right-of-way to a pedestrian at a street crossing (whether marked or not) and to a motor vehicle between crossings.
(167/339)

(2) The right-of-way is not absolute, and even though a pedestrian or a motorist may have the right-of-way at a crossing, each is nevertheless (still) bound to use such care as a reasonable man would use to see and hear what a reasonable man should see and hear, and to protect himself and others against danger.
(167/339)
(226/121)
(223/564)
(217/290)

(3) A pedestrian who starts across a street at an intersection upon a green light, or without a light, has the right-of-way over vehicles until he has crossed the roadway, even after the light has changed to red.
(194/550)
(164/125)

(4) A pedestrian is not bound to obey a stop sign at an intersection. He has the right-of-way over an oncoming vehicle and may cross a boulevard in front of it.
(228/73)

(5) It is not unlawful for a pedestrian to cross a street between crossings, but in doing so he

must use a higher degree of care (the greatest care 222 Md. 106) than is required at a place where he has the right-of-way in order to avoid injury.

(167/339)
(217/291)

b. Definitions -

(1) A pedestrian's crosswalk, where marked, is the area included between the lines marking it. In the absence of marked lines, it is the area formed by projecting the building line and the curb.

(194/550)

(2) The junction of a dead-end street with another street, i.e., a T junction, is a crossing within the meaning of the law.

(187/613)

(3) A crossing between street intersections in a residential area, not marked, but as to which there is evidence of customary use, is not a crosswalk within the meaning of the law.

(214/403)
(199/521)

(4) The rights of a pedestrian at a crossing where several streets come together and where crosswalks are not marked, are the same as those at a "regular" or right-angle intersection.

(151/226)

c. Right to Assume Others Will Do Duty -

A pedestrian who has the right-of-way may assume that where it is reasonably possible, a motorist will yield that right-of-way to him.

(167/339)
(217/253)

d. Contributory Negligence -

(1) A person who leaves a place of safety and walks into a place of danger is guilty of contributory negligence.

(227/537)
(222/106)
(222/297)
(228/454)

(2) A pedestrian who has the right-of-way may nevertheless be guilty of contributory negligence if he leaves a place of safety for one of danger without taking adequate precautions to avoid injury.
(228/454)

(3) It is not (prima facie) necessarily negligent for a pedestrian to cross a street between street crossings. You must judge his conduct in the light of all the circumstances.
(163/335)
(222/126)
(166/33)

(4) A person is deemed to leave a place of safety when he extends only his arm or other part, but not all, of his body into a place of danger.
(222/367)
(198/216)

(5) A person who suddenly walks, or runs, out into a street in front of a moving vehicle is negligent if you find that such conduct was not reasonable.
(203/244)
(199/16)

(6) A pedestrian who steps onto a safety island while crossing a street abandons his right-of-way to vehicles proceeding on the highway.
(222/367)

(7) A pedestrian who sees a vehicle coming on the proper side of the street is not bound to keep on looking to see whether it will change its course to the wrong side of the street.
(163/992)

(8) It is negligence for a person to enter or leave a standing vehicle on the side on which traffic is moving without taking care to see that he can do it with safety.
(225/76)

(9) A pedestrian at a corner is negligent if he does not look to see what traffic is on the street that he is crossing, but he is not bound to observe traffic on the intersecting

street. He is entitled to assume that a car from the intersecting street will give him a signal or yield the right-of-way.

(10) It is not contributory negligence for a pedestrian who has started to cross a street and who sees a car during his crossing driving towards him on the wrong side of the street, to turn back in order to reach a place of safety.

(163/418)

(11) A pedestrian who frequently visits or is present at a crossing, or private premises, must be regarded as familiar with its special conditions and hazards, and assumes the risk of such dangers if he uses them.

(___/___)

e. Motorist's Rights and Duties -

(1) The driver of a motor vehicle must use a high degree of care at an intersection. He must use a higher degree of care than a pedestrian (because of the great harm that a car might do to a pedestrian).

(196/465)

(2) A motorist must use a high degree of care at a crosswalk.

(185/1)

(3) A driver has no duty to anticipate that a pedestrian will cross a highway (street) between crosswalks.

(194/550)

(4) If a motorist injures a pedestrian while driving at excessive speed, you may find him liable if the excessive speed caused or contributed to the accident.

(226/121)

f. Passing Stopped Vehicles -

When a bus is stopped at a crossing, and a passenger who has alighted crosses the street in front of the bus and is struck by a car passing the bus, it is a question for you as to whether the pedestrian or the passing motorist was negligent.

Weizet v. List (161/28)
Brown v. Bendix (187/613)

715 BICYCLIST

A bicyclist must obey the motor vehicle rules.

229 Md 59

720 PASSENGERS

_____ was a passenger in _____'s car at the time of the accident (Question of law, to distinguish from master-servant relationship, etc.).

The fact that the driver may have been negligent does not mean that a passenger in the car was also negligent.

A passenger has a duty to exercise reasonable care for his own safety and that of others.

Ordinarily, a passenger is not under a duty to warn the driver of dangers or to concern himself about traffic conditions or the operation of the car. Circumstances care, (?) however, and there are times when a passenger exercising reasonable care should take some active measures to protect himself. For example -

1. If he knew of the danger which is likely to cause injury and he has no reason to believe the driver knows it exists, he should warn the driver.
2. If he is aware that the car is being driven negligently and he has an opportunity to protest, he should do so.

It is for you to say, considering all the circumstances, whether _____ failed to act as a reasonably prudent person while he was a passenger in _____'s car.

735 CHILDREN

The presence of children in the vicinity is a circumstance to be considered in determining whether the manner in which a person is driving is negligent at any particular time. We all know that children generally act with less judgment and care than adults do. A driver must, therefore, exercise greater caution when he knows or should know that children are in the vicinity.

1. The type of neighborhood, time of day, proximity of schools, etc. are some of the factors to consider in deciding whether a reasonable person would have realized children might be in the vicinity, and the speed and care with which a reasonable person would have driven under the circumstances.

2. If a driver hits a child on the street, it is for you to decide whether he was driving negligently at the time or whether he should have seen the child sooner than he did, or whether he could reasonably have avoided the accident.

3. If a child appears in the street suddenly and unexpectedly, a driver is not negligent in hitting him unless at the time he was driving without the proper degree of care and attention.

4. A child may be contributorily negligent. However, in determining whether he was negligent or not, you must judge his conduct by the standard of the average child of his age, experience and intelligence under similar circumstances.

735 NEGLIGENCE - INFANT
Illinois 10.05

A minor child is not held to as high a standard of care as an adult.

Ordinary care with respect to _____, a minor, means that degree of care which a reasonably careful minor (child) of his age, mental capacity, and experience, would use under circumstances similar to those shown by the evidence.

The law does not say how such a person (child) would act under these circumstances. That is for you to decide.

JBG #3 - INVOLVES AN INSTRUCTION HAVING TO DO WITH A PERSONAL INJURY CLAIM BY A TEN-YEAR-OLD LAD WHO WAS HIT WHILE CROSSING A STREET, BY AN AUTOMOBILE DRIVEN BY THE DEFENDANT.

Mr. Foreman and members of the jury:

There are some principles of law which you ought to know about, and concerning which the Court will instruct you in a few minutes. However, I am sure you will understand from the evidence in this case, that primarily this case involves a dispute of the fact with respect to how the collision occurred between the ~~plaintiff~~ Peter ~~John~~ Infant and the car operated by the defendant, Mr. D. You will understand, of course, that the determination of the facts will be your responsibility. You must weigh the evidence and determine the credibility of the witnesses who have testified, and the Court's reference to the facts will be only for the purpose of bringing clearly into focus the factual problems which you will be called upon to resolve.

We should inform you first that the burden of proof in this case is upon the plaintiff, Peter ~~John~~ Infant, to establish by a fair preponderance of the evidence that he is entitled to recover in this case. Now the defendant, Mr D, contends that while he was not guilty of any act of negligence on his part, entirely irrespective of that his contention the ~~plaintiff~~ Peter ~~John~~ Infant here has no right to recover, nor does his father, John ~~Matthew~~ Parent, because Peter ~~Bob~~ Infant he is barred by ~~the doctrine~~ his own ~~of~~ contributory negligence.

In a suit of this sort, any concurring negligence on the part of the ~~plaintiff~~ Peter Infant, which directly contributed to the happening of the accident, will bar recovery by the ~~plaintiff~~ him. However, in this case, because of the tender years of the ~~plaintiff~~ Peter, he is not charged with the same degree of care as would an ordinary adult person. Ordinarily a plaintiff in this type of action is charged with exercising the degree

of care which an ordinarily careful and prudent person would have exercised under like circumstances. This contemplates the degree of care which an ordinary, prudent and adult person would exercise. However, this lad is not charged with that degree of care. He is charged only with that degree of care which a child of his age and experience would reasonably be expected to exercise under like circumstances.

There is a sharp conflict in the testimony and consequent divergent claims by the respective parties about how this accident happened. Perhaps it would be helpful to you if the Court reviews the claim of both sides, so that you will see clearly the area of dispute which you must resolve.

The plaintiff, John ~~Matthews~~ Parent, claims that his son Peter Plaintiff, who was aged ten years at the time of this occurrence, was playing ball on the school athletic ground at 1st and Main Streets and, because a ball escaped into the ~~adjacent~~ lot street, Peter started into the street to retrieve the ball; that before entering the street ~~he~~ Peter carefully looked in both directions, and, seeing no traffic approaching, he proceeded after the ball. ~~The plaintiff~~ Mr. Parent further claims that the defendant Mr. D approached the area at a high rate of speed, and either did not see Peter or, if he saw him, negligently failed to avoid striking him.

On the other hand, the Mr. D defendant claims that he was driving slowly and well within the speed limit for the area being traversed, which is agreed to be — m.p.h. because he knew of the playground area. He claims he didn't see Peter until he bounded out between two parked cars and ran into the side of the defendant's car.

This presents a serious dispute of fact, crucial to the decision of this case, and, of course, you have the responsibility of determining

what the true facts are.

The Court informs you that it was the Defendant's duty to drive his car at a speed that was reasonable and proper under all of the circumstances, and to keep a lookout such as would have been kept by a reasonably prudent person under like circumstances. On the part of the ~~plaintiff~~ Peter, we wish to say that it was his duty, when he decided to go into the street after the ball, to exercise the degree of care and caution that an ordinarily prudent lad of his age, and with his experience, would have exercised under like circumstances.

If your verdict in this case is in favor of the plaintiffs, you are instructed that there are two different claims, one on behalf of Peter personally, and one on behalf of John ~~Plaintiff~~ Parent, Peter's father, and different rules apply to the amount of the verdict with respect to each of these two plaintiffs. As regards Peter's claim, his claim is limited to pain and suffering attendant upon his convalescence and reasonably certain to continue in the future. If you find from the evidence that a second operation will be reasonably necessary to restore Peter's leg to normal use, then you may also allow Peter such reasonable sum as will fairly compensate him for the pain and suffering which is reasonably certain to result from the second operation and during his convalescence therefrom. The medical testimony indicates that Peter may expect a complete recovery from the accident, and that there will be no resultant permanent injury, except for a scar in the area where the injury occurred. You may, if you find that scar is a substantial detriment to him, allow such sum as would reasonably compensate him for that permanent defacement.

As regards the father's claim, you are informed that the right of

JBG #3 (Contd.)

the father to recover is entirely contingent upon Peter's right to recover, and if you find your verdict for Peter, then you may also allow the father such sum as will reimburse him for the out-of-pocket expenses incurred by him in the care and treatment of his son, including the hospital and medical bills thus far incurred, plus such additional like expenses as you find will be reasonably necessary to incur in the future.

745 WORKERS ON HIGHWAY

Rights -

Duties -

A worker on a highway who, in the course of his work, creates a hazard to others, must take reasonable precaution by signs or otherwise, to warn others using the highway of the danger to himself and to others.

225 Md 278
158 Md 328
204 Md 94
171 Md 460